

James R. Bean, et al. v. Hunt Southern Group, LLC, et al.

Kim Emmett, M.D.

July 23, 2019

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES R. BEAN AND JEANNE F.)	
BEAN,)	
)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	1:18-cv-00393
HUNT SOUTHERN GROUP, LLC, FKA)	-HSO-JCG
FOREST CITY SOUTHERN GROUP, LLC,)	
et al.,)	
)	
)	
Defendants.)	

VIDEO RECORD & ORAL DEPOSITION OF

KIM EMMETT, M.D.

Tuesday, July 23, 2019

8:00 a.m.

11440 Parkside Drive

Suite 302

Knoxville, Tennessee 37934

Georgette H. Mitchell
Registered Professional Reporter

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<p>1 APPEARANCES OF COUNSEL: 2 ON BEHALF OF THE PLAINTIFFS: (Appearing via Zoom)</p> <p>3 4 R. Scott Wells, Esq. Rushing & Guice 1000 Government Street 5 Ocean Springs, Mississippi 39564 (228)374-2313 6 Swells@rushingguice.com 7 ON BEHALF OF THE DEFENDANT HUNT SOUTHERN GROUP, LLC:</p> <p>8 9 Walter H. Boone, Esq. Balch & Bingham LLP 188 East Capitol Street 10 Suite 1400 Jackson, Mississippi 39201 11 (601) 965-9179 Wboone@balch.com</p> <p>12 13 ON BEHALF OF THE DEFENDANT FOREST CITY SOUTHERN GROUP LLC: 14 Taylor H. White, Esq. Forman Watkins & Kurtz LLP 210 East Capitol Street 15 Suite 2200 Jackson, Mississippi 39201 16 (601) 960-3167 Taylor.white@formanwatkins.com 17 Also Present: 18 Brent Shorter, Videographer</p> <p>19 20 21 22 23 24 25</p>	<p>1 S T I P U L A T I O N</p> <p>2</p> <p>3 The videotaped deposition of KIM EMMETT, 4 M.D., called as a witness at the instance of the 5 Defendants, pursuant to all applicable rules, taken by 6 agreement on the 23rd day of July, 2019, beginning at 7 approximately 8:00 a.m., at the offices of Kim Emmett, 8 M.D., 11440 Parkside Drive, Suite 302, Knoxville, 9 Tennessee, before Georgette H. Mitchell, Registered 10 Professional Reporter and Notary Public, pursuant to 11 the stipulation of counsel.</p> <p>12 It being agreed that 13 Georgette H. Mitchell, Registered Professional Reporter 14 and Notary Public, may report the deposition in machine 15 shorthand, afterwards reducing the same to typewriting.</p> <p>16 All objections, except as to the form of 17 the question, are reserved to on or before the hearing.</p> <p>18 It being further agreed that all 19 formalities as to notice, caption, certificate, 20 transmission, etc., including the reading of the 21 completed deposition by the witness and the signature 22 of the witness, are waived.</p> <p>23 24 25</p>
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<p>1 I N D E X</p> <p>2 KIM EMMETT, M.D. 5</p> <p>3 EXAMINATION BY MR. BOONE 5</p> <p>4 EXAMINATION BY MS. WHITE 125</p> <p>5 EXAMINATION BY MR. WELLS 132</p> <p>6 EXAMINATION BY MR. BOONE 135</p> <p>7 EXAMINATION BY MS. WHITE 136</p> <p>8 E X H I B I T S</p> <p>9 Exhibit 1 - Records from Dr. Kim Emmett's office related to James Bean. 12</p> <p>10 11 Exhibit 2 - Medical Records from Faculty 14 Internal Medicine.</p> <p>12 Exhibit 3 - Medical Records Bates Numbers 469 through 497 regarding Mrs. Bean. 53</p> <p>13 14 Exhibit 4 - Medical Records relating to Jeanne 54 Bean.</p> <p>15 Exhibit 5 - Letter dated January 17, 2019 from 103 Mrs. Bean</p> <p>16 17 Exhibit 6 - Allergy Associates Record. 130</p> <p>18 19 20 21 22 23 24 25</p>	<p>1 (The deposition began at 7:58 central 2 time.)</p> <p>3 THE VIDEOGRAPHER: This will be the video 4 deposition of Dr. Kim Emmett taken in the matter 5 of James R. Bean, et al versus Hunt Southern 6 Group, LLC, et al.</p> <p>7 Today's date is July the 23rd, 2019. The 8 time now is 7:58 a.m. central time.</p> <p>9 Counsel may now introduce themselves, for 10 the record.</p> <p>11 MR. BOONE: My name is Walter Boone. I 12 represent Hunt Southern Group, LLC and Hunt MH 13 Property Management.</p> <p>14 MS. WHITE: My name is Taylor White. 15 I represent Forest City Residential 16 Management Company.</p> <p>17 MR. WELLS: I'm Scott Wells with Rushing 18 & Guice representing James Bean and Jeanne Bean in 19 this matter.</p> <p>20 THE VIDEOGRAPHER: The Court reporter may 21 swear in the witness.</p> <p>22 KIM EMMETT, M.D., 23 having first been duly sworn, was examined and deposed 24 as follows: 25 EXAMINATION BY MR. BOONE:</p>

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<p>1 Q. Good morning, Dr. Emmett. We introduced 2 ourselves earlier, but my name is Walter Boone, and I 3 represent two defendants in a lawsuit that James Bean 4 and Jeanne Bean have brought down in Mississippi. 5 We are here today because you have been 6 and currently are, I guess, the treating physician, 7 family doctor for the Beans; is that correct? 8 A. That's correct. 9 Q. If you would, ma'am, can you give us your 10 -- your full name and where you practice medicine? 11 A. My name is Dr. Kim Robinson Emmett. I 12 have practiced with Faculty Internal Medicine as well 13 as being on the faculty at the University of Tennessee 14 since 1999. 15 Q. Can you give us an idea about your 16 educational background? 17 A. How far back? 18 Q. Starting at college would be good. 19 A. Okay. My undergrad was one year at 20 Brandeis, completing undergrad at George Washington 21 University. I attended medical school at the 22 University of Kentucky and did a residency in internal 23 medicine as well as a two-year geriatrics fellowship at 24 the University of Kentucky. 25 Q. And are you licensed to practice</p>	<p>1 before they moved to Mississippi; is that right? 2 A. Yes. 3 Q. So we have a period of time, and I 4 believe, is it -- am I roughly correct that the Beans 5 lived in Mississippi from approximately 2014 to 6 approximately 2016, or in that neighborhood? 7 A. I know that they came back to see me in 8 2016. 9 Q. Right. 10 A. In the latter quarter, and I'd have to 11 look and see when my last contact was on the office 12 note though. 13 Q. Okay. 14 A. But it was probably 2013, was the last 15 time. 16 Q. 2013? So it's a two or three-year gap 17 there, but I guess the point I'm trying to make is that 18 you had the occasion to treat them both before they 19 left for Mississippi and after they came back from 20 Mississippi; is that fair? 21 A. Yes. 22 Q. All right. And let me ask you, have you 23 had any, before today, have you had any role in the 24 Beans' lawsuit that's pending down in Mississippi? 25 A. I -- I don't think so.</p>
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<p>1 medicine? 2 A. Yes. 3 Q. And how long have you been practicing 4 medicine? 5 A. I've had my license since 1987. I think 6 I had it when I was a resident. 7 Q. Right. And you've been here in Tennessee 8 practicing medicine basically ever since? 9 A. I was on staff at the University of 10 Kentucky from 1992 to 1999, and then moved here in 11 1999. 12 Q. I see. And what did you do in Kentucky? 13 A. Very much the same as I do here 14 practicing, office practice and supervising medicine 15 residents in the hospital setting. 16 Q. Are you -- you board certified in any 17 particular field? 18 A. Yes, I'm board certified in internal 19 medicine, and I have a certificate of qualifications in 20 geriatric medicine. 21 Q. All right. And I understand that you are 22 -- Mr. and Mrs. Bean are currently two of your 23 patients; is that correct? 24 A. That's correct. 25 Q. And you also treated Mr. and Mrs. Bean</p>	<p>1 Q. All right. Have you been asked by the 2 Beans' lawyers to give any opinions with respect to the 3 Beans' medical conditions? 4 A. My -- now, I'm not sure about Mr. Bean. 5 I'm not sure I received any request for records on Mr. 6 Bean. 7 Q. Okay. 8 A. Is that correct? 9 Q. Well, we -- I have some and I'll show 10 them to you. 11 A. Okay. 12 Q. But we did request records from your 13 office -- 14 A. Okay. 15 Q. -- and did receive responses to those. 16 A. Okay. 17 Q. But -- 18 A. Oh, okay. I'm sorry. 19 Q. That's okay. 20 A. Can you please repeat your question? 21 Q. No, no, no, no, you're worried about the 22 thing that's coming next and I feel you. We'll get 23 there. 24 A. Okay. 25 Q. And I'll show you the records that I want</p>

3 (Pages 6 to 9)

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1 to talk to about --
 2 A. Okay. Sure.
 3 Q. -- with respect to Mr. Bean. But for
 4 current purposes, have you been asked to provide any
 5 opinions in the lawsuit about the Beans' medical
 6 condition?
 7 A. Can you define that, please?
 8 Q. Yes, ma'am. Have you been asked by the
 9 Beans' lawyers to provide expert testimony to do a
 10 medical record review?
 11 A. No.
 12 Q. To render a report?
 13 A. No.
 14 Q. To do anything or say anything in the
 15 lawsuit that's pending in Mississippi?
 16 A. I have not.
 17 Q. All right. In fact, the first time you
 18 knew about a lawsuit -- well, you're here today as a
 19 result of the defendants, Forest City and Hunt,
 20 requesting that you be available for a deposition; is
 21 that true?
 22 A. Yes, I think so.
 23 Q. Okay. And up until this year, maybe in
 24 the March timeframe, did you even know there was a
 25 lawsuit in Mississippi?

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1 Once they left, they were under the care
 2 of presumably other physicians in Mississippi and you
 3 did not see them again until they came back; is that
 4 right?
 5 A. That is correct. It was my impression
 6 that they had other care there.
 7 Q. Okay. What I'd like to do is to -- to
 8 talk about the Beans separately beginning with Mr.
 9 Bean, and let me show you some records that we received
 10 from your office and ask you to identify them, if you
 11 can.
 12 (Exhibit 1 - Records from Dr. Kim Emmett's office
 13 related to James Bean.)
 14 BY MR. BOONE:
 15 Q. The first one is a stack that I've marked
 16 as Exhibit Number 1, and it has been Bates stamped --
 17 Scott for you, the first page is a transmittal to your
 18 office from the Forman Watkins, and that's Taylor's
 19 firm, and it's some records for James R. Bean that are
 20 following and it's been Bates stamped 3166 through
 21 3324.
 22 Do those look like records from your
 23 office?
 24 A. So far.
 25 Q. All right.

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1 A. I did not know.
 2 Q. Okay.
 3 A. I did not know.
 4 Q. And it's fair to say, and I guess
 5 obvious, but I guess I should ask it that while the
 6 Beans were in -- were in Mississippi, you did not treat
 7 them there.
 8 A. I did not.
 9 Q. Okay. And you were not aware of any --
 10 what symptoms they had while they were there, if any,
 11 were you?
 12 A. In Mississippi?
 13 Q. Yes, ma'am.
 14 A. During that timeframe, no.
 15 Q. All right. And you don't know what their
 16 medical conditions were, what they were exposed to,
 17 what they were complaining of, or any of those facts or
 18 circumstances, correct?
 19 A. While they were in Mississippi?
 20 Q. Yes, ma'am.
 21 A. Yes, while they were in Mississippi there
 22 was no communication regarding that.
 23 Q. Right. In other words, they didn't come
 24 back and forth to come see you while they were in
 25 Mississippi.

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1 A. Yes.
 2 Q. Take a moment to confirm that they are.
 3 And I'll tell you what, this is actually a request made
 4 from the Beans -- Mr. Bean's doctor in Mississippi, and
 5 apparently he had requested prior records from your
 6 office and that's what seems to be attached.
 7 Does that look like what we've got?
 8 A. So far, yes. Yes.
 9 Q. All right. Are the records in Exhibit 1
 10 true and accurate copies of your medical records from
 11 the treatment of Mr. Bean?
 12 A. They would appear to be so.
 13 Q. And were they generated in the ordinary
 14 course of your -- of the treatment of Mr. Bean?
 15 A. I believe they do reflect this.
 16 Q. All right. And these look like to be the
 17 records for the period of time or at least some of the
 18 records for the period of time before Mr. Bean moved to
 19 Mississippi; does that look right?
 20 A. Uh-huh, because of the format, the
 21 written notes that was before this EMR was.
 22 Q. Right. So if we're looking for the --
 23 the records that we've been able to locate for Mr. Bean
 24 before he moved to Mississippi, Exhibit 1 is a true and
 25 correct copy of those?

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1 A. I believe so, yes.
 2 (Exhibit 2 - Medical Records from Faculty
 3 Internal Medicine.)
 4 BY MR. BOONE:
 5 Q. All right. Let me show you Exhibit
 6 Number 2.
 7 Now, Exhibit Number 2 is a stack of
 8 medical records that we requested of Faculty Internal
 9 Medicine at Turkey Creek, which is your medical
 10 practice here in Tennessee?
 11 A. Right.
 12 Q. Correct?
 13 A. That's correct.
 14 Q. And these appear to me at least to be
 15 copies of your medical records for Mr. Bean for the
 16 period of time since he moved back from Mississippi; is
 17 that correct?
 18 A. I believe so. Let me -- well, there's
 19 some in here that are prior. So some --
 20 Q. Okay.
 21 A. -- some of these are ones that are
 22 scanned --
 23 Q. Oh, you're right. You're sure right.
 24 A. -- that are handwritten are prior
 25 records.

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1 some labs attached to it?
 2 A. It has some labs I think, yes.
 3 Q. Okay. Well, between Exhibit 1 and
 4 Exhibit 2, does this look like a complete set of Mr.
 5 Bean's records or do you know?
 6 A. Well, it depends on what you define as
 7 complete.
 8 Q. Well, I'm not in the -- I guess if I
 9 wanted to know all of the occasions that you treated
 10 Mr. Bean for and what he presented with and what you
 11 assessed him with, would these be complete?
 12 A. Yes.
 13 Q. Okay. What you're saying is there may be
 14 other incidental third party records, labs or whatnot
 15 that may not be included in here; is that true?
 16 A. Yes, I think so. That's true.
 17 Q. Okay. But in terms of what your
 18 treatment was, they were -- they're summarized
 19 somewhere in Exhibit 1 or Exhibit 2, correct?
 20 A. I believe so.
 21 Q. All right. And it looked like to me from
 22 Exhibit Number 1 and I'm going to refer you to some
 23 Bates numbers.
 24 A. Okay.
 25 Q. A Bates number is a number at the bottom

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1 Q. So this stack, Exhibit 2, looks to be
 2 before and after?
 3 A. Yes, it's the office notes.
 4 Q. All right. So let me ask you the same
 5 questions about Exhibit Number 2.
 6 Are these true and accurate copies of
 7 your medical records of Mr. Bean?
 8 A. I believe so.
 9 Q. Are they generated in the ordinary course
 10 of your medical treatment of Mr. Bean?
 11 A. Yes, I believe so.
 12 Q. And these appear to be the records from
 13 both before Mr. Bean moved to Mississippi and after Mr.
 14 Bean moved back here to Tennessee, correct?
 15 A. Yes, in terms of office, office notes.
 16 Some have labs and some have labs attached to the newer
 17 one.
 18 Does that make sense? If you consider
 19 that part of the office records, labs? This one I
 20 think, does not have labs attached, but it looks like
 21 it's mostly --
 22 Q. Exhibit 2?
 23 A. Yes, it looks like it mostly has office
 24 notes.
 25 Q. I see. Okay. And I think Exhibit 1 has

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1 right-hand corner?
 2 A. Okay. I see.
 3 Q. Just for, it's an easy kind of page
 4 number there, and I was looking at 3235.
 5 A. 3235. Date of visit 7-26-2004?
 6 Q. Yes, ma'am.
 7 A. Okay.
 8 Q. That looked like the first visit for Mr.
 9 Bean.
 10 Does that sound about right or at least
 11 it is in these records?
 12 A. It could be. Yes, it could be. He was a
 13 patient of Dr. Ellis, I believe.
 14 Q. Okay.
 15 A. One of the previous doctors here.
 16 Q. I see.
 17 A. I'd have to look in other archives, but
 18 this looks like it could be a first --
 19 Q. Okay.
 20 A. -- or about that time.
 21 Q. All right. And what did -- what were Mr.
 22 Bean's complaints on that occasion about fatigue and
 23 shortness of breath?
 24 And I'm looking at the fourth paragraph
 25 is where he mentions that.

5 (Pages 14 to 17)

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1 A. I believe the note says, this was a
2 transcription, it says, "notes, not shortness of
3 breath," probably should have been "no shortness of
4 breath at rest. Denies any cough. No chest pain or
5 heart palpitations, nausea, vomiting. He thinks he's
6 not able to exercise very well, becomes fatigued
7 easily."
8 Q. All right. Was Mr. Bean in the course of
9 your treatment with him before he moved to Mississippi,
10 did he have complaints, among other things, of fatigue?
11 A. Quite often.
12 Q. And what were those complaints? What did
13 they arise from?
14 A. I don't think it was well understood.
15 Q. All right.
16 A. Is what I -- he did, I believe he was
17 diagnosed with coronary artery disease at some point
18 within this time period.
19 Q. Right.
20 A. And --
21 Q. And will coronary artery disease, will
22 that, or can that result in a patient becoming
23 fatigued?
24 A. Some patients might.
25 Q. Okay.

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1 A. He also had problems with joint pain,
2 which I think were never clearly understood, so perhaps
3 some sort of an inflammatory joint problems.
4 I think he also had psoriasis. I
5 apologize, most people are fatigued with that.
6 Q. Okay. So at least in 2004 then, he was
7 complaining to you of fatigue; is that true?
8 A. That's what the note says.
9 Q. All right. The next one I want to take
10 you to is 3241.
11 A. Date of 6-6-2005?
12 Q. Yes, ma'am. So that's a date of visit of
13 June 6th, 2005; is that right?
14 A. I apologize, I have to open this up and
15 see.
16 Q. Is that right?
17 A. Yes, that's correct.
18 Q. And describe what symptoms Mr. Bean
19 presented with on that occasion to you.
20 A. Well, in the history he was talking about
21 cough and congestion, but he was evaluated for that.
22 Says "he's now having a productive cough with yellow
23 sputum," my note says. "No fever."
24 And then on the note, "not really short
25 of breath." Some people have difficulty describing

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1 their symptoms. And "does not have heart palpitations
2 or chest pain."
3 Q. All right. Does -- did he also complain
4 there in the second sentence of "runny nose, cough and
5 congestion"?
6 A. That's what my note says, yes.
7 Q. And what was your assessment with respect
8 to those complaints?
9 A. Well, for the runny nose and item number
10 four in assessment and plan, it says "allergic
11 rhinitis" and I had some samples of a nasal
12 antihistamine called Astelin that I gave to him.
13 And then for the yellow sputum, it says I
14 wrote a prescription for a Z-pack for bronchitis.
15 On exam, one exam, he had a few scattered
16 crackles, which cleared with coughing and I said his
17 ears appeared to be mildly distended with clear fluid
18 bilaterally, which can be seen with allergic rhinitis
19 from eustachian tube dysfunction.
20 Q. And what is allergic rhinitis?
21 A. Well, I would think it's common symptoms
22 of postnasal drip, runny nose. We use allergic
23 rhinitis as a catchall term, but some people don't
24 necessarily have allergies, they just have the
25 symptoms.

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1 Q. Right.
2 A. Might be called perennial rhinitis, so.
3 Q. And for rhinitis or for perennial
4 rhinitis or -- or allergic rhinitis, is that a fairly
5 -- you used the term catchall.
6 A. Uh-huh.
7 Q. Is that a common complaint among patients
8 across the board?
9 A. It's a common complaint here.
10 Q. Yeah.
11 A. Very common.
12 Q. Well, it's common for humans, isn't it?
13 We get rhinitis from time to time, don't we?
14 A. Right, but it's very common in this area
15 in particular.
16 Q. Yeah. And what are some of the causes of
17 a rhinitis?
18 A. Well, you know, most patients don't go
19 through allergy testing, they just pick up something
20 over-the-counter and so it could be -- it could be a
21 reaction to something in the environment, and when
22 people have allergy evaluations, which I don't do, but
23 they might be allergic to dust mites, which are common
24 in our environment, cockroaches, cat dander, trees,
25 grasses.

6 (Pages 18 to 21)

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<p>1 Q. Yes.</p> <p>2 A. And the like, so...</p> <p>3 Q. And those are the -- so rhinitis may be</p> <p>4 caused and in your experience, can be caused by</p> <p>5 allergic to reactions to the things you just mentioned?</p> <p>6 A. Right, or just it may be a nonallergic</p> <p>7 reaction. We don't really understand what -- the</p> <p>8 perennial rhinitis. You may have the same symptoms,</p> <p>9 but not test positive to -- to any of the allergens you</p> <p>10 tested for.</p> <p>11 Q. I see. So it could be -- have some kind</p> <p>12 of viral source or some other source; is that fair?</p> <p>13 A. Yeah.</p> <p>14 Q. All right.</p> <p>15 A. Yeah. Nonviral.</p> <p>16 Q. Viral/nonviral, it's a broad category --</p> <p>17 A. Right.</p> <p>18 Q. -- of complaints, isn't it?</p> <p>19 A. Yes.</p> <p>20 Q. And common?</p> <p>21 A. Yes, very common.</p> <p>22 Q. And I guess, did you in 2005, when Mr.</p> <p>23 Bean reported rhinitis and you assessed rhinitis, did</p> <p>24 you determine the cause, if any, or treat the symptom?</p> <p>25 A. You treat the symptom. It would be very</p>	<p>1 office note for January 5th of 2011.</p> <p>2 Do you see that?</p> <p>3 A. January 5th? Yes.</p> <p>4 Q. And is this your writing or is that the</p> <p>5 nurse practitioner again?</p> <p>6 A. No, that's my writing.</p> <p>7 Q. Okay. Good.</p> <p>8 What was Mr. Bean's complaint on this</p> <p>9 occasion in 2011?</p> <p>10 A. Chief complaint was nausea.</p> <p>11 Q. Did Mr. Bean also complain of fatigue at</p> <p>12 that time?</p> <p>13 A. There's a positive sign by that so, under</p> <p>14 review of systems.</p> <p>15 Q. And did you determine the source of Mr.</p> <p>16 Bean's complaint of fatigue?</p> <p>17 A. Well, it says I was checking a lab, which</p> <p>18 is not attached and a C reactive protein and a CBC, but</p> <p>19 no, I didn't have any conclusion for what was causing</p> <p>20 his fatigue.</p> <p>21 Q. Okay. But this is another example of Mr.</p> <p>22 Bean's complaint of fatigue before he moved to</p> <p>23 Mississippi to you, correct?</p> <p>24 A. Yes. That's also a common complaint in</p> <p>25 this area, too.</p>
Page 23	Page 25
<p>1 unlikely to find a cause.</p> <p>2 Q. Right. And 3242 is another note, the</p> <p>3 following page. This one dated in May of 2005.</p> <p>4 A. That should be previous to.</p> <p>5 Q. It is. I'm kind of working -- well --</p> <p>6 A. And this doesn't look like my writing.</p> <p>7 Q. Is it not? I couldn't tell.</p> <p>8 A. It says reviewed. This was a nurse, a</p> <p>9 PA, Beverly Glazer. I think she's a nurse practitioner</p> <p>10 who worked with us at the time, so this is not my</p> <p>11 handwriting.</p> <p>12 Q. I see.</p> <p>13 A. I just signed off as reviewed.</p> <p>14 Q. I see. So the month before he had come</p> <p>15 in with basically the same complaints; is that true?</p> <p>16 A. Yes. Well, the initial complaint, yes.</p> <p>17 Q. Runny nose, cough?</p> <p>18 A. Right.</p> <p>19 Q. And then on the second page at 3242, 43,</p> <p>20 do you see the impression, allergic rhinitis again,</p> <p>21 right?</p> <p>22 A. Yes, and viral syndrome.</p> <p>23 Q. Right.</p> <p>24 A. Yes, I see that.</p> <p>25 Q. If you would look at 3244, which is an</p>	<p>1 Q. Sure. And -- and what are some of the</p> <p>2 causes of fatigue in your practice?</p> <p>3 A. In our practice? De-conditioning from</p> <p>4 not exercising, sleep apnea, hyperthyroidism,</p> <p>5 medication side effects.</p> <p>6 Q. Right.</p> <p>7 A. I hate to say it, aging, but there's a</p> <p>8 lot of people that say they're tired, depression. I</p> <p>9 guess I can't think of the term for it, but our busy</p> <p>10 lives, overworked, overscheduled.</p> <p>11 Q. Sure. And did Mr. Bean fall into</p> <p>12 multiple of those categories?</p> <p>13 A. I'm trying to remember if he would have</p> <p>14 been retired at the time. I'm not sure when he retired</p> <p>15 from Alcoa. I don't know. He may have been already</p> <p>16 retired at that point.</p> <p>17 Q. All right.</p> <p>18 A. I just don't remember.</p> <p>19 Q. But you do recall his date of birth was</p> <p>20 1952. So at this point he is 60 or close thereby,</p> <p>21 right?</p> <p>22 A. Right.</p> <p>23 Q. So you -- some of the fatigue could be</p> <p>24 consistent with aging; is that true?</p> <p>25 A. Perhaps if you don't exercise and I don't</p>

7 (Pages 22 to 25)

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<p>1 get the impression that he was very physically active</p> <p>2 at that time.</p> <p>3 Q. Right. Did you also understand and I</p> <p>4 think it may be later in your practice that you</p> <p>5 diagnosed him with sleep apnea?</p> <p>6 A. He was probably referred to someone who</p> <p>7 diagnosed him with sleep apnea.</p> <p>8 Q. Okay.</p> <p>9 A. I don't evaluate for sleep apnea.</p> <p>10 Q. Fair enough. You sent him to a sleep</p> <p>11 specialist or somebody?</p> <p>12 A. That would be my general practice, yes.</p> <p>13 Q. Okay. But did you -- you are aware that</p> <p>14 Mr. Bean has sleep apnea, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And can sleep apnea cause fatigue?</p> <p>17 A. It can.</p> <p>18 Q. And how does that -- how does that</p> <p>19 happen?</p> <p>20 A. Well, my understanding is what happens is</p> <p>21 that patients do not achieve deeper stages of sleep or</p> <p>22 adequate sleep because their brain constantly has to</p> <p>23 awaken and have a -- have the chest or the lungs breath</p> <p>24 in. So people don't achieve, and they may also have a</p> <p>25 low oxygen level at times because they're not -- not</p>	<p>1 A. This was in 2007. So yes, he did have</p> <p>2 symptoms of allergic rhinitis then.</p> <p>3 Q. And enough recurring symptoms for you to</p> <p>4 issue a prescription for Zyrtec for him.</p> <p>5 A. Yes.</p> <p>6 Q. And if you would look at 3265.</p> <p>7 Is that your record for Mr. Bean from</p> <p>8 March 21st of 2008?</p> <p>9 A. Yes.</p> <p>10 Q. And did Mr. Bean report fatigue on that</p> <p>11 occasion?</p> <p>12 A. I'm sorry. Let me look at the note here.</p> <p>13 Yes, he must have. I apologize.</p> <p>14 Q. Do you see the assessment number two?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And what does it say?</p> <p>17 A. It says "fatigue," and I said "I think</p> <p>18 this is to be expected following his very prolonged</p> <p>19 serious illness."</p> <p>20 Q. And what series illness was that?</p> <p>21 A. I know that he had a biopsy, a prostate</p> <p>22 biopsy, and said he had to go to the emergency room</p> <p>23 with the -- oh, I'm sorry. He had fevers and I'm not</p> <p>24 sure that our office gave the Levaquin. It may have</p> <p>25 been the urologist.</p>
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<p>1 breathing regularly.</p> <p>2 Q. All right. So let's move on to 3252 and</p> <p>3 I know these are kind of jumping around. I apologize</p> <p>4 for that, or actually it's 3253.</p> <p>5 This is an office note of December 27th,</p> <p>6 2007. Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Is that your --</p> <p>9 A. Yes.</p> <p>10 Q. -- record there?</p> <p>11 A. That's my handwriting, yes.</p> <p>12 Q. Okay. And what was -- I'm interested in</p> <p>13 the fourth assessment there.</p> <p>14 What was that?</p> <p>15 A. That on assessment and plan, allergic</p> <p>16 rhinitis, which was, I believe an ongoing issue for him</p> <p>17 and he simply wanted me to refill his antihistamine.</p> <p>18 Q. All right. And what antihistamine were</p> <p>19 you prescribing to him?</p> <p>20 A. Well, the brand name is Zyrtec, and I</p> <p>21 think the generic name is cetirizine. You don't really</p> <p>22 have to prescribe that anymore, it's over-the-counter.</p> <p>23 Q. Right. So is this another example of Mr.</p> <p>24 Bean diagnosed by you with allergic rhinitis before he</p> <p>25 moved to Mississippi?</p>	<p>1 Q. All right.</p> <p>2 A. And it looks like he had to have a</p> <p>3 catheter for urinary retention, and then he also had a</p> <p>4 bout of extreme swelling in his face and tongue,</p> <p>5 angioedema.</p> <p>6 And it says he talked to his</p> <p>7 cardiologist, Dr. Weatherbee, and did not feel that --</p> <p>8 oh, this is angioedema. I'm sorry to wander here.</p> <p>9 Q. That's okay.</p> <p>10 A. All right. It looks like he went to a</p> <p>11 walk-in clinic too. So he had a series of events.</p> <p>12 Q. Yeah. And one of those too, it says,</p> <p>13 "Mr. Bean began having a cough productive of white</p> <p>14 sputum. He went to a walk-in clinic and was treated</p> <p>15 with a Z-pack. This is the slowly getting better."</p> <p>16 Right?</p> <p>17 A. I apologize.</p> <p>18 Q. Fourth from the last line.</p> <p>19 A. Fourth from the last line. Yes, I see</p> <p>20 that now.</p> <p>21 Q. All right.</p> <p>22 A. Did you have a question about that?</p> <p>23 Q. Yes. So like most patients, Mr. Bean had</p> <p>24 various upper respiratory complaints over the period of</p> <p>25 time that you treated him before he moved to</p>

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1 Mississippi; is that correct?
 2 A. That is correct.
 3 Q. All right. And did you treat Mr. Bean
 4 for rhinitis before he moved to Mississippi?
 5 A. Yes.
 6 Q. On multiple occasions?
 7 A. Well, yes, I mean, the one note we
 8 alluded to he had a prescription for 90 days with three
 9 refills, so that would be over the course of a year.
 10 So, yes, multiple occasions.
 11 Q. All right. And did you treat Mr. Bean
 12 for fatigue before he moved to Mississippi?
 13 A. Well, he talked to me about fatigue, yes,
 14 that was mentioned.
 15 Q. Okay. Fair enough. And with respect to
 16 fatigue, you've already told us what some of the common
 17 causes of that are, correct?
 18 A. Yes.
 19 Q. Aging, coronary artery disease, sleep
 20 apnea and other things, all of which Mr. Bean had,
 21 right?
 22 A. Yes.
 23 Q. Did -- and what are the causes for the
 24 rhinitis?
 25 A. Well --

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1 the angioedema.
 2 Q. Okay. But in terms of the runny nose,
 3 congestion, did you determine what cause those were
 4 ever attributed to?
 5 A. I don't have a defined cause.
 6 Q. Okay.
 7 A. I provided treatment.
 8 Q. And same thing with the fatigue, did you
 9 determine, Dr. Emmett, what the cause of the fatigue
 10 was for Mr. Bean?
 11 A. I don't think there was a single cause.
 12 It's what we call multifactorial, different things.
 13 Q. All right. So before Mr. Bean moved to
 14 Mississippi he had reported on multiple occasions both
 15 rhinitis and fatigue to you in his treatment, correct?
 16 A. Yes.
 17 Q. All right. And turning to Exhibit Number
 18 2, which is the other stack that I gave you.
 19 A. Okay.
 20 Q. You can put that clip back on that thing.
 21 A. I need a bigger clip.
 22 Q. Okay. Great. You can just set that one
 23 over there.
 24 I want to draw your attention to Bates
 25 stamp page 1996.

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1 Q. Just in general.
 2 A. Okay. I'm so sorry.
 3 Q. That's okay.
 4 A. There could be allergic reaction to some
 5 environmental stimulus. There can be a reaction we
 6 don't quite understand that just stimulates the mucus
 7 glands to secrete mucus. Some people might be -- have
 8 a reaction to very strong smells, perfumes or the like,
 9 smoke.
 10 Q. All right.
 11 A. Okay. And I'm so sorry. There might be
 12 some medicines that maybe somebody might have a side
 13 effect.
 14 Q. All right.
 15 A. -- of runny nose with.
 16 Q. And did you ever in the course of your
 17 treatment with Mr. Bean before he moved to Mississippi,
 18 determine the cause of the rhinitis?
 19 A. I don't think so. He did go to see an
 20 allergy immunologist about his angioedema, the swelling
 21 that he had periodically in his lips and I would have
 22 to look at that note to see if he was tested for
 23 anything else. I apologize.
 24 Q. But that was just the swelling in his --
 25 A. That was the main reason, yes, he went,

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1 Does this look like your first office
 2 note since, upon Mr. Bean's return from Mississippi?
 3 A. Yes, it does.
 4 Q. And what's the date that you saw him?
 5 A. Thursday, September 22nd, 2016.
 6 Q. All right. And you're quite correct.
 7 You say in this note that it has been over three years
 8 since his last office appointment, right?
 9 A. Yes.
 10 Q. And was that because he was living in
 11 Mississippi in that interim time period?
 12 A. That is my understanding.
 13 Q. All right. What did he report about his
 14 medical issues to you in 2016?
 15 A. He updated me on his coronary artery
 16 disease that he had two stents placed while living in
 17 Mississippi. We talked about his hypertension briefly.
 18 And then still the problem with the hives
 19 and history of psoriasis. He requested a refill on his
 20 steroid cream.
 21 Q. All right. In the second line of the --
 22 CC is chief complaint, right?
 23 A. Yes. Yes.
 24 Q. The CC paragraph he says, "he reports his
 25 medical issues are about the same and stable."

9 (Pages 30 to 33)

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<p>1 Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Did he at that occasion, have any</p> <p>4 complaints about his living conditions at Keesler</p> <p>5 military base in Mississippi?</p> <p>6 A. I don't recall that he discussed that</p> <p>7 with me.</p> <p>8 Q. Did he complain that he had any medical</p> <p>9 issues arising out of his living situation at Keesler?</p> <p>10 A. I don't recall that he discussed that</p> <p>11 with me.</p> <p>12 Q. Well, and in fact, he says his medical</p> <p>13 issues are about the same and stable, correct?</p> <p>14 A. That was my understanding.</p> <p>15 Q. Did he mention anything about mold to you</p> <p>16 or that he may have been exposed to mold while at</p> <p>17 Keesler?</p> <p>18 A. I don't recall that he did.</p> <p>19 Q. Sure. If he had mentioned that he had</p> <p>20 been exposed to mold, would you have written it down?</p> <p>21 A. I would try to, yes. Yes.</p> <p>22 Q. Yes, ma'am.</p> <p>23 A. My usual procedure, yes.</p> <p>24 Q. And in your -- you hadn't seen him for</p> <p>25 three years. I'm quite sure you took a history of</p>	<p>1 mold, would you have written it down?</p> <p>2 A. Generally, I would write it down.</p> <p>3 Q. Okay. And the fact that it's not in this</p> <p>4 piece of paper, does that indicate to you one way or</p> <p>5 another whether he mentioned mold?</p> <p>6 A. I think he probably did not mention it to</p> <p>7 me.</p> <p>8 Q. All right. Otherwise what?</p> <p>9 A. I would have generally, I'd write it down</p> <p>10 under review of systems and maybe on a problem although</p> <p>11 sometimes people will just tell me that they're</p> <p>12 allergic to mold and people will attribute a lot of</p> <p>13 symptoms to mold, so...</p> <p>14 Q. Yes, ma'am. And why do they do that?</p> <p>15 A. Because I think mold is very somewhat</p> <p>16 common. I mean, most people have been exposed to</p> <p>17 histoplasmosis just by living here, which is a common</p> <p>18 mold.</p> <p>19 So people will say sometimes that their</p> <p>20 symptoms, which might be a rhinitis, they're concerned</p> <p>21 about -- about mold.</p> <p>22 Q. And it's because we try to, as humans</p> <p>23 walking around the earth, we're not doctors, but we</p> <p>24 like oh, I saw mold and now I've got a runny nose, it</p> <p>25 must be the mold.</p>
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<p>1 anything of significance that had occurred in the prior</p> <p>2 three years; is that fair?</p> <p>3 A. I think so.</p> <p>4 Q. And in response to the question I'm sure</p> <p>5 you asked, which was something along the lines of, is</p> <p>6 there anything that I need to know about your medical</p> <p>7 situation over the last three years, what did he tell</p> <p>8 you?</p> <p>9 A. Generally, I'll just ask for an update</p> <p>10 and I think he must have told me that he was glad to be</p> <p>11 back and that about his stents that he had.</p> <p>12 Q. All right. And the stents were for the</p> <p>13 coronary artery disease?</p> <p>14 A. That would be my understanding.</p> <p>15 Q. And is that the only thing he referenced</p> <p>16 about the change in any medical condition while he was</p> <p>17 living in Mississippi?</p> <p>18 A. He only talked about specialists</p> <p>19 evaluation for his urticaria, for his hives again while</p> <p>20 he was in Mississippi, and he asked for a refill on his</p> <p>21 Prednisone.</p> <p>22 Q. All right. So did Mr. Bean report</p> <p>23 anything to you about mold?</p> <p>24 A. I don't recall that he did.</p> <p>25 Q. And if he had reported anything about</p>	<p>1 That's what the normal path is, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you find in your experience</p> <p>4 about that, what?</p> <p>5 A. Can you refine the question, please?</p> <p>6 Q. Yes, ma'am. Can we attribute all of</p> <p>7 those symptoms to mold just because we saw it?</p> <p>8 A. Well, perhaps if you had an allergic</p> <p>9 reaction and you didn't have a lot of rhinitis and then</p> <p>10 you were exposed and suddenly your symptoms really</p> <p>11 increased, perhaps.</p> <p>12 It's -- it's somewhat tricky to prove</p> <p>13 that with allergy testing and the like because -- I</p> <p>14 would think.</p> <p>15 Q. And it's tricky because we are exposed to</p> <p>16 a lot of different things all day long, day and night,</p> <p>17 and it's very tricky to determine what a particular</p> <p>18 thing is caused by when we're walking around; is that</p> <p>19 fair?</p> <p>20 A. In my experience, yes. An allergist may</p> <p>21 have a different answer to that.</p> <p>22 Q. All right. So moving back to Mr. Bean</p> <p>23 also did not have any complaints to you in 2016, that</p> <p>24 he had been experiencing headaches while he was in</p> <p>25 Mississippi, did he?</p>

10 (Pages 34 to 37)

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<p>1 A. I don't recall that he said that to me.</p> <p>2 Q. Yes, ma'am. And I know you don't have a</p> <p>3 specific recollection, but what I'm trying -- do you</p> <p>4 try to write down the medical issues that the patient</p> <p>5 reports to you?</p> <p>6 A. I do try to.</p> <p>7 Q. Okay. And if a patient reported that he</p> <p>8 had been experiencing headaches while he was living in</p> <p>9 Mississippi, would you have written that down?</p> <p>10 A. Yes.</p> <p>11 Q. And is it written down that he reported</p> <p>12 that he was experiencing headaches while he lived in</p> <p>13 Mississippi?</p> <p>14 A. Not in this note.</p> <p>15 Q. All right. And did he report that he had</p> <p>16 experienced any rhinitis symptoms, congestion, upper</p> <p>17 respiratory, anything like that?</p> <p>18 A. I don't recall if we even talked about</p> <p>19 that, so, but I did not -- I did not write it down.</p> <p>20 Q. Yes, ma'am. And again, I guess where I'm</p> <p>21 getting with all of this is if he had said boy, gee</p> <p>22 whiz, the last three years I've had unbelievable</p> <p>23 congestion and upper respiratory infection and eyes and</p> <p>24 ears and nose, you would have written that down,</p> <p>25 wouldn't you?</p>	<p>1 comments about being under stress.</p> <p>2 Q. Did they attribute the cause of that</p> <p>3 stress?</p> <p>4 A. There was just, as I recall, there was</p> <p>5 more of a generalized statement about I had the feeling</p> <p>6 it might be stress of moving and they had moved because</p> <p>7 of their son, and moved to Mississippi and when their</p> <p>8 son and his family moved away, they moved back here.</p> <p>9 So I think that's what --</p> <p>10 Q. All right.</p> <p>11 A. -- I recall the stressor.</p> <p>12 Q. Fair enough. But nothing specific</p> <p>13 relating to --</p> <p>14 A. It was mostly generalized stress.</p> <p>15 Q. What about the sleep apnea? What</p> <p>16 reference are you making there?</p> <p>17 A. I think probably just a reference that he</p> <p>18 had a history of that. I don't recall --</p> <p>19 Q. All right.</p> <p>20 A. -- more about that.</p> <p>21 Q. And again sleep apnea, can that cause</p> <p>22 fatigue?</p> <p>23 A. It can if the treatment is not effective.</p> <p>24 Q. Right. Was Mr. Bean undergoing treatment</p> <p>25 of any kind for sleep apnea?</p>
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<p>1 A. Generally.</p> <p>2 Q. Okay. And did you?</p> <p>3 A. I did not write that down.</p> <p>4 Q. And what conclusion can you reach from</p> <p>5 the fact that it's not written down?</p> <p>6 A. Well, there may have been some higher</p> <p>7 priorities to talk about than this at that -- at that</p> <p>8 point. Unless perhaps he felt he didn't have enough</p> <p>9 time to go over all the things he wanted to go over.</p> <p>10 Q. Fair enough. And some of the other</p> <p>11 issues are the coronary artery disease, which he</p> <p>12 updated you on, right?</p> <p>13 A. Yes.</p> <p>14 Q. And again, can coronary artery disease</p> <p>15 cause fatigue?</p> <p>16 A. It could if it were not well controlled.</p> <p>17 Q. All right. Did it in Mr. Bean's case?</p> <p>18 A. I believe he had a history that that was</p> <p>19 a contributor to his fatigue it seems.</p> <p>20 Q. All right. And I noticed down here in</p> <p>21 psychiatric, positive for feelings of stress and you</p> <p>22 have in parentheses, sleep apnea.</p> <p>23 A. Uh-huh.</p> <p>24 Q. What does that note mean?</p> <p>25 A. I think he and his wife had both made</p>	<p>1 A. I hope so. You have to wear it, and that</p> <p>2 was not something that I was monitoring --</p> <p>3 Q. Okay.</p> <p>4 A. -- so I hope he was wearing his device at</p> <p>5 that time.</p> <p>6 Q. And what was your note with respect to</p> <p>7 allergic slash immunologic right above the psychiatric?</p> <p>8 It's on the same page just right above.</p> <p>9 A. I didn't write anything. So I think that</p> <p>10 was not a focus of our discussion that day.</p> <p>11 Q. All right. And I believe on page 1975 --</p> <p>12 A. 1975?</p> <p>13 Q. Yes, ma'am, which is --</p> <p>14 A. Okay.</p> <p>15 Q. -- previous in your stack.</p> <p>16 What date is this note from?</p> <p>17 A. The date of that note is Friday,</p> <p>18 September 21st, 2018.</p> <p>19 Q. All right. This is the most recent note</p> <p>20 we got in the records that we requested.</p> <p>21 Does that look like the most recent to</p> <p>22 you?</p> <p>23 A. I can double check, but I believe it's</p> <p>24 the most recent.</p> <p>25 Q. Okay. And what were his, again, his</p>

11 (Pages 38 to 41)

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<p>1 current complaints at that time?</p> <p>2 A. His chief complaint actually was</p> <p>3 depression and anxiety. He had follow-up, and I don't</p> <p>4 recall if he requested some refills on his meds.</p> <p>5 Q. All right.</p> <p>6 A. More about anxiety.</p> <p>7 Q. And you have a note there in the history</p> <p>8 and physical section about his coronary artery disease,</p> <p>9 right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. You'll have to say yes or no --</p> <p>12 A. Yes.</p> <p>13 Q. -- so she can write that down.</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Okay. And you write there that the</p> <p>16 course of the disease has been waxing and waning?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Right?</p> <p>19 A. Yes, I did.</p> <p>20 Q. And waxing and waning, what did you mean</p> <p>21 by that?</p> <p>22 A. Well, he had a -- he had to have the</p> <p>23 stents in Mississippi after he left here, so his</p> <p>24 condition would require monitoring by his cardiologist.</p> <p>25 So for many patients with coronary artery disease, the</p>	<p>1 and just was becoming very anxious, but he did not tell</p> <p>2 me the definite source of his anxiety. I thought maybe</p> <p>3 they might have some issues financially perhaps.</p> <p>4 Q. Okay.</p> <p>5 A. That's a common stressor as people get</p> <p>6 older.</p> <p>7 Q. And you mentioned that depression can</p> <p>8 also be a source of fatigue; is that true?</p> <p>9 A. Yes.</p> <p>10 Q. How does that work?</p> <p>11 A. Well, I don't think people quite</p> <p>12 understand, but it is one of the symptoms that can be</p> <p>13 associated with depression, perhaps because, you know,</p> <p>14 the brain chemicals are not as high, serotonin may be</p> <p>15 not as high, but I think it's just a pervasive feeling</p> <p>16 that you don't feel like doing things and so people</p> <p>17 will say they're tired.</p> <p>18 I'm sorry, I don't have a more in depth</p> <p>19 explanation --</p> <p>20 Q. No, that's --</p> <p>21 A. -- than that. My observation.</p> <p>22 Q. -- that's fine. It is certainly more</p> <p>23 expert than anything I know.</p> <p>24 Let me ask and in Mr. Bean's case,</p> <p>25 fatigue, a potential cause of that is the depression</p>
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<p>1 whole process of starting to block arteries keeps going</p> <p>2 with medications.</p> <p>3 Q. And not to beat a dead horse, but can and</p> <p>4 did Mr. Bean's coronary artery disease result in</p> <p>5 fatigue for him?</p> <p>6 A. It might have been a contributor.</p> <p>7 Q. All right. You were also treating him</p> <p>8 for hypertension and hyperlipidemia, which is high</p> <p>9 cholesterol, right?</p> <p>10 A. Correct.</p> <p>11 Q. Can those conditions also result in</p> <p>12 fatigue?</p> <p>13 A. Hyperlipidemia generally would not.</p> <p>14 Hypertension, if you have fatigue, it's usually because</p> <p>15 of side effects of medicines, so...</p> <p>16 Q. Okay. And then your -- a lot of your</p> <p>17 attention went to the diagnosis of anxiety with</p> <p>18 depression, right?</p> <p>19 A. Right.</p> <p>20 Q. And was that related to a particular</p> <p>21 cause or circumstance or could you determine?</p> <p>22 A. It was hard to determine. He had</p> <p>23 described, I'm not sure if it's in another note. My</p> <p>24 understanding he has a lot of pain from his arthritis,</p> <p>25 but I didn't put that in there, that's what I recall,</p>	<p>1 that he was suffering as well?</p> <p>2 A. That can be a contributor.</p> <p>3 Q. All right. Now, I have been through your</p> <p>4 records of Mr. Bean after he came back from Mississippi</p> <p>5 and I did not find a single reference to mold.</p> <p>6 A. Okay.</p> <p>7 Q. So did he -- well, let me ask you this.</p> <p>8 If he reported a concern about prior exposure to mold,</p> <p>9 would you have written that down?</p> <p>10 A. Generally, I would write it down.</p> <p>11 Q. All right. And so what do you conclude</p> <p>12 from the absence of the term or use, description of the</p> <p>13 term "mold" in these records, since he came back from</p> <p>14 Mississippi?</p> <p>15 A. I don't think he discussed it with me and</p> <p>16 perhaps there was more than one reason for that.</p> <p>17 Q. Okay.</p> <p>18 A. I would also like to say that with our</p> <p>19 group, sometimes when people come in for physicals they</p> <p>20 are advised that if they want to discuss more than the</p> <p>21 physical, it might not be able to accommodate that</p> <p>22 during the time of a physical.</p> <p>23 So sometimes people will feel they're not</p> <p>24 going to discuss things that aren't part of the</p> <p>25 physical, and some of his visits were for wellness</p>

12 (Pages 42 to 45)

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1 visits, I believe or physical exams.
 2 Q. Okay.
 3 A. So sometimes people may not discuss
 4 things that they're thinking about, but I don't think
 5 he discussed it with me during our visits.
 6 Q. Okay. Well, surely if you -- and we saw
 7 the first note where he returned from Mississippi, you
 8 asked him what significant medical issues he had
 9 encountered in his absence, correct?
 10 A. Yes, I ask people to update me when they
 11 come back.
 12 Q. Right. And that's when he reported that
 13 he had had two stents put in for his coronary artery
 14 disease, right?
 15 A. Yes.
 16 Q. He did not report at that occasion that
 17 he had been exposed to mold, true?
 18 A. If he reported it, I didn't write it
 19 down. I don't recall --
 20 Q. Right.
 21 A. -- him talking about that.
 22 Q. And if -- if he had reported it, that's
 23 something that you would have written down.
 24 A. Generally, I would write it down.
 25 Q. Okay. Because you wrote down the stents,

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1 right?
 2 A. Yes. Yes.
 3 Q. And he also did not report whether he
 4 attributed it to mold or not, that he had had any
 5 significant headaches, rhinitis, fatigue, anything
 6 serious of that nature while he was gone, did he?
 7 A. I do not recall any discussion of that.
 8 Q. And your notes do not reflect that he
 9 reported that, right?
 10 A. I don't believe they -- yes, I believe
 11 they report that he did not, that they reflect that he
 12 did not report that to me.
 13 Q. Right. And if he had reported those
 14 things, they would have been contained in your notes?
 15 A. Yes, generally.
 16 Q. Let me ask you this. Clearly we've been
 17 through the records for Mr. Bean before he moved to
 18 Mississippi and you treated him for fatigue, rhinitis.
 19 We've been through that, right?
 20 A. Yes.
 21 Q. Right. And you treated him for fatigue
 22 and rhinitis after he came back from Mississippi,
 23 right?
 24 A. I would have to look. I was looking to
 25 see if that was an antihistamine was mentioned on his

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1 medication list.
 2 Q. Right. See if you can see that.
 3 A. I don't see it on the medication list
 4 from September 21st, unless he were taking -- now
 5 taking something over-the-counter and he did not report
 6 it.
 7 Q. Look on 1976. I'm not sure what all
 8 those are but --
 9 A. There's no antihistamine on that list.
 10 Q. Okay.
 11 A. I don't see it reported on the 3-20-18
 12 list, but as I said, sometimes people are just buying
 13 things over-the-counter and they don't -- they don't
 14 bring it up.
 15 Q. Sure. And as you mentioned, Zyrtec went
 16 over-the-counter in the interim, right?
 17 A. Yeah, it's been over-the-counter for
 18 quite a while.
 19 Q. Okay. So he may be taking an
 20 antihistamine for that stuff and just, it wouldn't show
 21 up in your records; is that what you're saying?
 22 A. Yes, unless he didn't tell us.
 23 Q. I understand.
 24 A. Okay.
 25 Q. And do you hold any opinions, Dr. Emmett,

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1 that any of the symptoms that you treated Mr. Bean for
 2 were caused by exposure to mold while he lived in
 3 Mississippi?
 4 A. Well, I don't have that I -- I don't
 5 believe I was treating him for a headache or sinus
 6 congestion or shortness of breath or a cough at that
 7 time, I don't believe. I have no record that he and I
 8 discussed this.
 9 Q. Okay. I guess my question is a little
 10 bit broader.
 11 A. Okay.
 12 Q. Did you treat Mr. Bean while he lived in
 13 Mississippi?
 14 A. No.
 15 Q. Did you know what his symptoms were while
 16 he lived in Mississippi?
 17 A. No.
 18 Q. Did you -- were you able to do a
 19 differential diagnosis as to what his symptoms were
 20 caused by or not caused by while he lived in
 21 Mississippi?
 22 A. No.
 23 Q. And when he came back to Tennessee, did
 24 you do -- did you have any of that information we've
 25 just been through?

13 (Pages 46 to 49)

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1 A. I don't think so.

2 Q. Okay. And so sitting here today, can you

3 testify to a reasonable degree of certainty that any of

4 Mr. Bean's symptoms were caused by exposure to mold

5 while he lived in Mississippi?

6 A. Can you please rephrase that question for

7 me?

8 Q. Sure. It's a legal question, and the

9 term "to a reasonable degree of medical certainty"

10 means that you can testify in your professional opinion

11 that something was caused by something.

12 Do you follow me?

13 A. Yes.

14 Q. Okay. So what I'm asking you, were any

15 of the symptoms that you treated Mr. Bean for caused by

16 exposure to mold while he lived in Mississippi to a

17 reasonable degree of medical certainty?

18 A. Not -- not that I would have treated him

19 for.

20 Q. All right. And can you say -- so, for

21 example, you treated Mr. Bean for fatigue in the period

22 of time after he came back from Mississippi, correct?

23 A. Is that -- I apologize. Is that on my --

24 Q. Yes, ma'am, it is.

25 A. Okay -- on my medical notes? We probably

Page 51

1 discussed it, yes.

2 Q. Yes. Can you attribute that fatigue to a

3 reasonable degree of medical certainty, to anything

4 that he was exposed to while he lived in Mississippi,

5 or have you been treating Mr. Bean for fatigue since

6 before he went to Mississippi?

7 A. He and I have discussed fatigue before he

8 went to Mississippi. So I do not believe I was

9 treating him for mold or evaluating him for mold

10 symptoms.

11 Q. Right. And, in fact, as we discussed

12 before, Mr. Bean never even reported to you that he had

13 been exposed to mold while he lived in Mississippi,

14 correct?

15 A. Correct. I don't believe we discussed

16 it.

17 Q. All right. Let's turn now -- well, and

18 let me ask one final follow-up question.

19 Obviously, Mr. Bean now has a lawsuit

20 pending in Mississippi, and he claims among other

21 things that fatigue, rhinitis and headaches were caused

22 by exposure to mold while he lived in Mississippi.

23 Is that news to you?

24 A. Well, yes. As of a day or two ago, yes.

25 Q. Understood. I understand. Well, that's

Page 52

1 what he's saying in the lawsuit that's pending in

2 Mississippi.

3 My question to you is, is that you don't

4 have any opinions to a reasonable degree of medical

5 certainty about whether that is correct or not, true?

6 A. I do not have any opinions --

7 Q. Right.

8 A. -- on that.

9 Q. And that's because, number one, you did

10 not treat Mr. Bean while he lived in Mississippi for

11 his symptoms that he experienced in Mississippi,

12 correct?

13 A. Correct.

14 Q. Number two, you did treat Mr. Bean for

15 those same symptoms before he went to Mississippi,

16 true?

17 A. For those symptoms, yes.

18 Q. And you treated him for similar symptoms

19 after he came back from Mississippi, right?

20 A. In terms of discussing fatigue, yes.

21 Q. All right. And as a result of all of

22 that, you see evidence that he had the same symptom

23 before and the same symptom after, and you can't

24 attribute any of that to his exposure in Mississippi;

25 is that fair?

Page 53

1 A. That's fair.

2 Q. All right. So let's move to Mrs. Bean.

3 You can set 1 and 2 aside. Let's put the clip back on

4 it so our court reporter doesn't get mad at us.

5 A. Okay.

6 Q. We'll set these right over here.

7 Now, the first set I'm going to show you

8 I'm going to mark as Exhibit Number 3.

9 (Exhibit 3 - Medical Records Bates Numbers 469

10 through 497 regarding Mrs. Bean.)

11 BY MR. BOONE:

12 Q. This is a set of medical records that we

13 received from your office. They are Bates numbered 469

14 through 497. You can take a look at Exhibit Number 3.

15 Have you had a chance to look at Exhibit

16 Number 3?

17 A. I have.

18 Q. Are those true and accurate copies of

19 your medical records for Mrs. Jeanne Bean?

20 A. Yes, in our new electronic medical

21 record.

22 Q. All right. And were those records

23 generated in the ordinary course of your medical

24 treatment of Mrs. Bean?

25 A. Yes.

14 (Pages 50 to 53)

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1 Q. And are these -- okay.
 2 I'm going to show you now what we'll mark
 3 as Exhibit Number 4, which is another set of records we
 4 received from your office.
 5 (Exhibit 4 - Medical Records.)
 6 BY MR. BOONE:
 7 Q. Can you identify these for us?
 8 A. Yes. These also appear to be records
 9 that would have been generated in the new EMR. So they
 10 don't contain the previous records before she moved to
 11 Mississippi.
 12 Q. Right. So sometimes you get these
 13 records in dribbles and drabs and I think we got --
 14 A. Yeah.
 15 Q. -- we got these in dribbles and drabs.
 16 So Exhibit Number 4, are these true and
 17 accurate copies of medical records for Miss -- of your
 18 treatment of Mrs. Jeanne Bean?
 19 A. Yes.
 20 Q. And were they generated in the ordinary
 21 course of your treatment of Mrs. Bean?
 22 A. Yes.
 23 Q. Now, you also indicated and I think in
 24 preparation for your deposition today, you have asked
 25 your staff to go and retrieve the records from the

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1 (Off record discussion.)
 2 THE VIDEOGRAPHER: Back on the record.
 3 It's 9:08. This is the beginning of DVD number
 4 two.
 5 BY MR. BOONE:
 6 Q. So Dr. Emmett, while we were off the
 7 record, we discussed the logistics of the archived
 8 records for Mrs. Bean, and I think what we would like
 9 to do is we will -- well, first of all, did your office
 10 locate prior records for Mrs. Bean from the period of
 11 time before she moved to Mississippi?
 12 A. Yes.
 13 Q. And have you produced those records to
 14 us?
 15 A. I believe so.
 16 Q. All right. And would those -- were those
 17 records kept in the ordinary course of your business?
 18 A. Yes.
 19 Q. And treatment of Mrs. Bean?
 20 A. Yes.
 21 Q. And were those records true and accurate
 22 copies of your medical record for Mrs. Bean?
 23 A. Yes, to the best of my knowledge.
 24 Q. Okay. We will -- and it's approximately
 25 376 pages.

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1 archive; is that correct?
 2 A. Yes.
 3 Q. All right. And I believe you have
 4 produced approximately 370 pages of records that you
 5 got from the archives; is that right?
 6 A. That would be -- yes.
 7 Q. It's a stack, isn't it?
 8 A. Yeah, it's a huge stack.
 9 Q. It's so much of a stack that nobody, you
 10 me, Taylor, we know nobody printed it out because it
 11 would --
 12 A. Yes. Oh, it's printed out.
 13 Q. Oh, you got it.
 14 Do you have the actual copy there?
 15 A. Yes. I'm sorry. Let me just -- we
 16 didn't separate it. I was just handed that this
 17 morning. I'm sorry, not to be better ready.
 18 Q. No, that's okay.
 19 A. This is all.
 20 Q. You want to go off the record for a
 21 second and get that?
 22 A. Yes.
 23 Q. Let's do that.
 24 THE VIDEOGRAPHER: Off the record. It's
 25 9:04. This is the end of DVD number one.

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1 MR. BOONE: Does that sound right,
 2 Taylor, of records we will supplement --
 3 MS. WHITE: Yeah.
 4 BY MR. BOONE:
 5 Q. -- your --
 6 Well, those are the records that we are
 7 talking about; is that correct?
 8 A. Yes.
 9 Q. Okay. We don't have a physical hard copy
 10 to mark here today, but we will use that description
 11 and we're just going to move forward.
 12 Let me start our discussion with
 13 Mrs. Bean the same way we started with Mr. Bean.
 14 You had the -- did you have the occasion
 15 to treat Mrs. Bean both before she moved to Mississippi
 16 and after she came back from Mississippi?
 17 A. Yes.
 18 Q. All right. And it looked like to me that
 19 your treatment of Mrs. Bean was on many more occasions
 20 than Mr. Bean; is that true?
 21 A. Probably not in the last -- not since
 22 she's been back, but on many occasions before that,
 23 yes.
 24 Q. Okay. So in the period of time before
 25 she moved to Mississippi, and before we get there, just

15 (Pages 54 to 57)

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1 so you know, Mrs. Bean is also involved in a lawsuit in
2 Mississippi.

3 Did you know that, before this proceeding
4 today?

5 A. I did not know that before the end of
6 March.

7 Q. Okay. Well, she is. She is a plaintiff
8 in a lawsuit and among other things, she says that some
9 of her medical injuries, symptoms, were caused by
10 exposure to mold.

11 She mentions worsening of the COPD,
12 worsening of her allergies, headaches, breathing, her
13 being low on energy, anxiety and depression, among
14 other things. I'm just telling you that for your
15 information.

16 A. Okay.

17 Q. And the reason why I'm telling you is
18 because as we did with Mr. Bean, I want to talk to you
19 a little bit about the occasions on which you treated
20 Mrs. Bean for the same things before she ever moved to
21 Mississippi.

22 Do you understand where I'm coming from?

23 A. Yes.

24 Q. Okay. And the fact is that you did treat
25 Mrs. Bean for a long period of time before she moved to

Page 60

1 different complaints; is that right?

2 A. That's correct.

3 Q. Was one of those complaints that she had
4 had difficulty breathing?

5 A. Do you mean recently or prior?

6 Q. In that timeframe before she moved to
7 Mississippi, you had treated her or she had referenced
8 that she had COPD, emphysema, difficulty breathing and
9 that kind of thing, didn't she?

10 A. Well, I'm not sure she ever met the
11 criteria for COPD, but there were times when she came
12 in with a cough and she had some evaluation, but this
13 was prior to her move.

14 Q. Okay. Okay. And did that change after?

15 A. She did not come to see me primarily for
16 complaints of cough. Generally, her visits were
17 physical exams and I think she had an as-needed visit
18 for a breast lump.

19 Q. All right. One of the other things that
20 I noticed -- so -- so she would report to you about
21 shortness of breath, breathing troubles, that kind of
22 thing before she moved to Mississippi; is that fair?

23 A. Yes.

24 Q. Okay. And did you attribute those
25 complaints to any particular cause?

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1 Mississippi, correct?

2 A. Yes.

3 Q. And when did you begin treating her,
4 ballpark?

5 A. Well, I moved here in 1999, so it would
6 not have been before that. She was part of the
7 practice. She was a patient here, and I think some of
8 the first notes I saw a note, I think from 2000, 2002,
9 where I would have been talking to her and treating her
10 for sometime.

11 Q. All right. And did you pretty much
12 follow Mrs. Bean from 2000, 2002, up until the time of
13 2013 or so when she moved to Mississippi?

14 A. Yes.

15 Q. All right. And on -- in that timeframe,
16 can you give us ballpark guesstimate how many times you
17 saw her? Dozens?

18 A. Well, yes, maybe two dozen. Okay.

19 Q. It's enough to make a big stack of
20 records, wasn't it?

21 A. Yes.

22 Q. Okay. And you were Mrs. Bean's kind of
23 family doctor, right?

24 A. Yes, that's correct.

25 Q. And she came to you with a variety of

Page 61

1 A. Well, she has seen an allergist before.
2 This was in 2001, according to her record as well as an
3 ENT and she was diagnosed with allergic rhinitis and
4 eustachian tube dysfunction. This would have been
5 years ago.

6 Q. And what was she -- unpack that for me.
7 Do you recall what -- what -- when she
8 saw the allergist, what that resulted in?

9 A. May I look?

10 Q. Please. Please.

11 A. She has -- she had several conditions
12 that were -- and so some of these medical records
13 unfortunately are separated out into -- well, as I
14 recall what it was for, I'm sorry, I don't have the
15 note and it is, I believe his record has been produced
16 in the -- in what you all were given.

17 Having a cough, post nasal drip, runny
18 nose and the like, and she's had -- there's listings of
19 cough even prior to my assuming her care and had a
20 chest X-ray in 1998. So that was a concern for her
21 then.

22 Q. Okay.

23 A. She also said that she was having
24 troubles with a loss of a sense of smell. This would
25 have been 2001, and she has multiple diagnosis of

16 (Pages 58 to 61)

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1 sinusitis in those records at that time.
 2 Q. All right. So -- so what we -- do we see
 3 in the period of time from 2000, 2002 to 2013, multiple
 4 references where she's coming in and you're treating
 5 her for rhinitis?
 6 A. Probably not so much after 2011, or so.
 7 I looked at the notes and that was not mentioned as
 8 much.
 9 Q. Okay.
 10 A. You know, in between those -- those
 11 times.
 12 Q. So from 2011 to 2013 maybe not so much,
 13 but from 2000 to 2011?
 14 A. Yes.
 15 Q. Okay. And were you also -- and did you
 16 attribute that rhinitis to any particular cause on
 17 those occasions?
 18 A. I'm trying -- I think when she had an
 19 allergy evaluation by Dr. Ty Prince, as I recall his
 20 note did not indicate any particular substances that
 21 she was allergic to. I would have to see the note
 22 again --
 23 Q. Okay.
 24 A. -- to be extra sure on that. But, so
 25 probably similar things. We can't test for every

Page 63

1 single thing that people might have an allergic
 2 response to.
 3 Q. Let's go off the record and see if we can
 4 find that note.
 5 A. Okay.
 6 THE VIDEOGRAPHER: Off the record. It's
 7 9:17.
 8 (Recess.)
 9 THE VIDEOGRAPHER: Back on the record.
 10 It's 9:19.
 11 BY MR. BOONE:
 12 Q. Were you able to locate a reference to
 13 what the allergist had tested Mrs. Bean for?
 14 A. Yes.
 15 Q. And -- and what do your records reflect?
 16 A. The note indicates that according to her
 17 allergy testing, skin tests were positive to dust,
 18 cockroach, cats, molds, trees, grass, and ragweed.
 19 Q. So that's a broad list.
 20 A. Yes.
 21 Q. Okay. And are all of those things
 22 present here in Tennessee?
 23 A. Definitely.
 24 Q. And would it be conceivable or possible
 25 to look to determine if someone has an allergic symptom

Page 64

1 and they're allergic to that many different things, can
 2 you attribute it to any particular thing, the
 3 particular symptom is coming from?
 4 A. It might be difficult. I mean, it might
 5 be difficult.
 6 Q. Right. And that's because we are around,
 7 like it or not, dust mites, cockroaches, pet dander,
 8 trees, grasses, even molds day in day out?
 9 A. Yes.
 10 Q. And so if you have a particular allergic
 11 reaction to one of those things, it would be nearly
 12 impossible to identify with precision that it was
 13 caused by any one of those things; is that fair?
 14 A. With absolute precision, yes.
 15 Q. Okay. But even with a reasonable degree
 16 of medical certainty, you couldn't say it's trees and
 17 grasses and not dust mites, right?
 18 A. Not that, yes, you're correct.
 19 Q. Okay. Same thing, you couldn't say it's
 20 molds and not dust mites, right?
 21 A. Well, if you had an environment where you
 22 had no dust mites then you could say you had mold.
 23 Q. But -- but that's not the case in
 24 Tennessee or Mississippi for that matter, is it?
 25 A. It would be difficult.

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1 Q. And dust mites are everywhere, molds are
 2 everywhere, trees and grasses are everywhere?
 3 A. Yes.
 4 Q. In Tennessee and in Mississippi; is that
 5 right?
 6 A. I know about Tennessee.
 7 Q. Okay.
 8 A. I don't know about Mississippi.
 9 Q. We're not too far down the road.
 10 A. Okay.
 11 Q. But dust mites don't stop at the state
 12 line, I don't think. But as a -- and that's kind of
 13 joking, but as a general matter -- that's a general
 14 principal.
 15 It's very, very hard, is it not, Dr.
 16 Emmett, to establish that a particular symptom,
 17 particular allergic symptom arises from a particular
 18 causal agent when they're allergic to many causal
 19 agents; is that fair?
 20 A. It's difficult. Only if you had a very
 21 concentrated exposure and you had severe symptoms, but
 22 it's -- it would be difficult to prove absolutely.
 23 Q. Okay. So what we've seen then is that
 24 you have a reference -- a note in your reference that
 25 Mrs. Bean was allergic to all these things, right?

17 (Pages 62 to 65)

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1 A. Yes.

2 Q. And then you see -- and you treated her

3 for multiple kind of medical things arising from that,

4 sinusitis, rhinitis, things of that nature; is that

5 fair?

6 A. She has had -- received treatment for

7 that in the past, yes.

8 Q. Okay. And we -- we've mentioned rhinitis

9 before, but what is sinusitis?

10 A. Well, that would be inflammation of the

11 sinus cavities that are above the nose usually and

12 within the skull, within the skull, and so it might be

13 that some people have a bacterial infection or a viral

14 infection.

15 I think also people who have chronic

16 rhinitis might have increased mucus secretion from

17 their sinuses, so that could cause chronic

18 inflammation.

19 Q. All right. So they could be related to

20 one another?

21 A. Yes.

22 Q. All right. Now, did Mrs. Bean have a

23 history of smoking?

24 A. Yes.

25 Q. And how long did she smoke?

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1 A. I did review records --

2 Q. All right.

3 A. -- from 2004 on.

4 Q. And can you tell us, a ball park, did you

5 treat and did Mrs. Bean present with rhinitis in that

6 period of time before she moved to Mississippi?

7 A. It's mentioned at least three times in

8 the records --

9 Q. All right.

10 A. -- prior to that move.

11 Q. And what about complaints of sinusitis?

12 A. At least two times in the records.

13 Q. And what about complaints of shortness of

14 breath?

15 A. There was, I'm sorry, I counted about two

16 times that there was acute shortness of breath.

17 Q. All right. And what about other kind of

18 upper respiratory things, were there notations in your

19 records of -- that she was complaining of upper

20 respiratory symptoms before she moved to Mississippi?

21 A. At least twice --

22 Q. All right.

23 A. -- in the record.

24 Q. Now, did you, and I hate to lump them all

25 together, but did you attribute any of those symptoms

Page 67

1 A. According to the record, probably about

2 20 years and then my most recent note says she stopped

3 at age 40.

4 Q. Even if you stop at age 40, can you have

5 -- still have lingering effects from that?

6 A. For a time.

7 Q. Right. So in the -- let me kind of close

8 this up with the period of time before Mrs. Bean moved

9 to Mississippi.

10 Did you treat Mrs. Bean for rhinitis in

11 that timeframe?

12 A. I would have to look through those notes

13 because I can't see a med list on -- in my general

14 computer. If you need me to stop and do that for a

15 moment I can.

16 Q. Sure, if you would. Let's go off the

17 record.

18 THE VIDEOGRAPHER: Off the record. It's

19 9:25.

20 (Off record discussion.)

21 THE VIDEOGRAPHER: Back on the record.

22 It's 9:27.

23 BY MR. BOONE:

24 Q. Dr. Emmett, have you had a chance to

25 review the archive records from that period of time?

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1 to any particular causes or is that just kind of normal

2 walking around symptoms that one might expect from a

3 patient?

4 A. Well, there are patients that have

5 several upper respiratory infections a year. I don't

6 think she was smoking at that time, which it seems that

7 many people who smoke will have more bouts of sinusitis

8 and upper respiratory infection.

9 Q. Okay.

10 A. And I think she had continued symptoms of

11 rhinitis and postnasal drip during that time.

12 Q. Okay. So it's fair to say that in your

13 treatment of Mrs. Bean before she moved to Mississippi

14 that she had complaints of rhinitis, sinusitis,

15 shortness of breath, upper respiratory illnesses, fair?

16 A. That's fair. Somewhere episodic. I

17 think the rhinitis was probably ongoing.

18 Q. All right. I want to turn your attention

19 to the period of time now when Mrs. Bean returned from

20 Mississippi and the first note that I have actually is

21 from a hospital stay.

22 Look on Exhibit 4.

23 A. Okay.

24 Q. Page 2572.

25 A. 2572, okay.

18 (Pages 66 to 69)

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<p>1 Q. That looks like -- well, can you tell us</p> <p>2 what that is?</p> <p>3 A. It looks like it's a chest X-ray.</p> <p>4 Q. And if I recall correctly that there's a</p> <p>5 notation in your records that Mrs. Bean presented to</p> <p>6 the emergency room with shortness of breath; is that</p> <p>7 correct?</p> <p>8 A. I think that's correct. This was not</p> <p>9 here in Tennessee though.</p> <p>10 Q. All right. Look at -- oh, she didn't</p> <p>11 report to the ER.</p> <p>12 Where is this located? Oh, this is in</p> <p>13 Biloxi.</p> <p>14 A. It says Biloxi --</p> <p>15 Q. Okay.</p> <p>16 A. -- in the report.</p> <p>17 Q. All right. So that's before she got to</p> <p>18 Tennessee?</p> <p>19 A. I believe so.</p> <p>20 Q. All right. Well, let's -- I want to get</p> <p>21 -- I thought that was in Tennessee. Look at 2562,</p> <p>22 which I guess is your first reference.</p> <p>23 That's where she fills out her patient</p> <p>24 history; is that right?</p> <p>25 A. I'm sorry. The page number again,</p>	<p>1 No pleural effusion." No other comments than those.</p> <p>2 Q. So the MRI and the X-ray were basically</p> <p>3 normal?</p> <p>4 A. The CT scan.</p> <p>5 Q. I mean, CT scan. Sorry.</p> <p>6 A. And chest X-ray says "chronic</p> <p>7 fibrocalcific changes in the lungs," which that would</p> <p>8 be hard to have an etiology for that.</p> <p>9 Q. Okay.</p> <p>10 A. She's been a smoker and has been in the</p> <p>11 area where we can have acute lung infections.</p> <p>12 Q. And she did -- Mrs. Bean did report to</p> <p>13 you about mold at her previous home; is that correct?</p> <p>14 A. She referenced it, but I don't recall</p> <p>15 that we had an in depth discussion about that.</p> <p>16 Q. Okay. You did write on 2562, "mold at</p> <p>17 previous home," right?</p> <p>18 A. 2562? Yes, I wrote down mild emphysema</p> <p>19 and I wrote a question mark whether that was related to</p> <p>20 mold at previous home. So she would have made a</p> <p>21 statement to me about that.</p> <p>22 Q. All right. And by that record, that is</p> <p>23 just limited -- well, let me ask it.</p> <p>24 Is that limited to what Mrs. Bean told</p> <p>25 you?</p>
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<p>1 please?</p> <p>2 Q. 2562?</p> <p>3 A. Okay. Yes, I see it.</p> <p>4 Q. And that's -- she indicates on this</p> <p>5 patient medical history that she had emphysema slash</p> <p>6 COPD, right?</p> <p>7 A. She did mark that and in my handwriting</p> <p>8 underneath it, says mild. So I would usually talk to</p> <p>9 someone about that, about that entry.</p> <p>10 Q. All right. And, in fact, it looked like</p> <p>11 you requested the -- at least the X-ray from Biloxi</p> <p>12 showing that there was no disease process, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So she had been to the emergency</p> <p>15 room while she was in Biloxi and what was the result of</p> <p>16 that? 2572.</p> <p>17 A. Thank you so much. The chest X-ray was</p> <p>18 negative, but I don't think there were details of what</p> <p>19 they recommended for treatment or if they treated her.</p> <p>20 Q. All right.</p> <p>21 A. And she also had a CT but pulmonary</p> <p>22 embolism study too, as well on 2571.</p> <p>23 Q. And what was the result of that?</p> <p>24 A. Well, it says "no evidence of pulmonary</p> <p>25 embolism. Lungs, no pneumonia or suspicious nodule.</p>	<p>1 A. Yes.</p> <p>2 Q. All right. That's based solely on her</p> <p>3 report to you; is that true?</p> <p>4 A. I don't recall that we had an in depth</p> <p>5 discussion about it.</p> <p>6 Q. Yes, ma'am. My point is you're not</p> <p>7 saying there was mold in her previous home --</p> <p>8 A. No.</p> <p>9 Q. -- you're just saying that that's what</p> <p>10 Mrs. Bean said?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And you didn't see any mold</p> <p>13 tests or any photographs or any other evidence</p> <p>14 indicating whether or not there was mold at her prior</p> <p>15 residence, true?</p> <p>16 A. That's true.</p> <p>17 Q. All right. And on the list of</p> <p>18 medications, did you see things --</p> <p>19 A. Can you tell me which page you're on now?</p> <p>20 Q. 2561, the prior page.</p> <p>21 A. Okay. I'm on the page now.</p> <p>22 Q. Does she have -- are allergy medications</p> <p>23 listed on here?</p> <p>24 A. The allergy medicine called Montelukast</p> <p>25 and Fluticasone nasal spray is on that list.</p>

19 (Pages 70 to 73)

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1 Q. And I see Singulair.
 2 A. That's Montelukast.
 3 Q. I got you. And what about Flonase nasal
 4 spray?
 5 A. That's the Fluticasone nasal spray.
 6 Q. I see. Okay. So in the period of time
 7 after she gets back, she has the same allergies, and is
 8 taking allergy medication; is that right?
 9 A. She's taking medicine. Now, Singulair or
 10 Montelukast potentially could also be used for asthma.
 11 That's another indication for it if somebody had that
 12 diagnosis.
 13 Q. All right. Did she have a diagnosis of
 14 asthma?
 15 A. Not one that was repeated. I saw one
 16 alluded to years ago, but I don't think she had a
 17 definitive diagnosis.
 18 Q. All right.
 19 A. Maybe in Mississippi she might have, but
 20 not in Tennessee.
 21 Q. All right. Well, flipping back to
 22 Exhibit Number 3 for a second.
 23 A. Okay.
 24 Q. Yeah, let's keep these binders on there.
 25 A. Thank you. All right.

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1 in the home in which she was living.
 2 I think she had some testing. There was
 3 a reference to, I believe perhaps an office visit and
 4 pulmonary function tests are -- it says that's in the
 5 plan, but I did not receive a copy of the pulmonary
 6 function test from Mississippi.
 7 She was told she might have mild COPD,
 8 but then she also said since she's returned to
 9 Tennessee her symptoms are better, and she's on
 10 Singulair.
 11 Q. Okay. So let me unpack that a little
 12 bit.
 13 What you are telling us about the -- when
 14 you say she presents with a diagnosis of -- how do you
 15 say that?
 16 A. Dyspnea.
 17 Q. Dyspnea. What is dyspnea?
 18 A. That's just a term means shortness of
 19 breath and again, it's not specific to any one cause.
 20 Q. Gotcha. That's just a CPT code for a
 21 lump of what could be a variety of different things?
 22 A. Well, it is a terminology, but it's
 23 included in the ICD-10 code --
 24 Q. I gotcha.
 25 A. -- which is diagnosis coding that we have

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1 Q. On Exhibit 3, page 491, that's the first
 2 record I saw of an office visit after she got back from
 3 Mississippi; is that right?
 4 A. That's correct. That's correct.
 5 Q. And I want to ask you some questions
 6 about this.
 7 A. Okay.
 8 Q. In the history and physical section in
 9 the fourth paragraph she talks -- you talk about
 10 "presents with a diagnosis of dyspnea and respiratory
 11 abnormalities."
 12 Can you explain that for us?
 13 A. You mean what it means?
 14 Q. What she was reporting, what you were
 15 writing and what that means?
 16 A. Okay. That particular wording is
 17 confined to ICD-10 codes. The ICD-10 codes, which
 18 indicate a diagnosis are not always -- do not always
 19 flow very well, so...
 20 Q. I got you.
 21 A. So that -- it's when we -- this is
 22 probably not what you need to know, but she did report
 23 as I said, when she was in Mississippi that she had
 24 some cough and shortness of breath and these were her
 25 comments that she thought it might be from mold present

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1 to use to present to insurance companies --
 2 Q. All right.
 3 A. -- to list what the diagnoses are. And
 4 it can be a symptom or it can be a condition which has
 5 been diagnosed.
 6 Q. So was Mrs. Bean any more specific about
 7 cough and shortness of breath or is that just basically
 8 what she told you?
 9 A. That is what she told me.
 10 Q. All right. And there's a sentence here
 11 "she was living in a home where there seemed to be mold
 12 present."
 13 A. I think those were her words.
 14 Q. All right. So when -- so you wrote down
 15 that Mrs. Bean told you that there seemed to be mold
 16 present.
 17 Is that your best recollection?
 18 A. Yes.
 19 Q. In other words, Mrs. Bean was not certain
 20 that there was mold, she just said there seemed to be
 21 mold; is that fair?
 22 A. Fair, from what I remember of our
 23 discussion.
 24 Q. Okay. And then it says she was told she
 25 might have COPD.

20 (Pages 74 to 77)

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1 Did you ever see a record that she had
2 actually been diagnosed with COPD by anyone?
3 A. I did not see pulmonary function test
4 results. There may be something in the exhibit that's
5 from Mississippi, an office note in one of these
6 exhibits.
7 Q. Okay.
8 A. An outpatient office note.
9 Q. Okay.
10 A. I don't know where it is in this exhibit.
11 Q. Okay.
12 A. I think there was a few pages from an
13 outpatient evaluation.
14 Q. All right. Well, did you diagnose her
15 with COPD?
16 A. No.
17 Q. Okay. And sitting here today, do you
18 know whether anyone else has?
19 A. I do not.
20 Q. Okay. And COPD, is that caused by
21 smoking?
22 A. That's a contributor.
23 Q. Okay. I suppose there's other -- well,
24 is that the most common cause of COPD in your
25 experience?

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1 Q. And your next sentence says, "she is on
2 Singulair." And what does Singulair do?
3 A. Singular could help if there was a
4 component of asthma or it can help for allergic
5 rhinitis. Those are the two main indications for that
6 medicine.
7 It might -- it might help with COPD, but
8 that's not the definite indication for the medicine.
9 Q. Okay. That's a standard kind of allergy
10 medication --
11 A. Yes.
12 Q. -- right?
13 A. Yes.
14 Q. All right. What did she tell you about
15 her anxiety?
16 A. Let's see. Well, she has had anxiety
17 symptoms for more than five years. So this would have
18 been -- had been before she went to Mississippi.
19 Q. Okay.
20 A. And so I don't recall exactly how long
21 she had been on Zoloft or as needed, benzodiazepine,
22 but I think she had been on medication for longer than
23 five years for that condition.
24 Q. Okay. And the frequency she says is
25 several times per month?

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1 A. That's a common cause and there would be
2 more lung diseases that could cause shortness of breath
3 or cough.
4 Q. Right. And was Mrs. Bean a smoker?
5 A. She had smoked, yes, previously.
6 Q. For 20 years?
7 A. Roughly 20 years to the best of my
8 understanding.
9 Q. All right. Now, when she said -- you
10 wrote down "since she has returned to Tennessee her
11 symptoms are much better."
12 Do you see that?
13 A. Yes.
14 Q. Are those, again, are those her words?
15 A. Those are her words.
16 Q. Okay. So she says that her symptoms are
17 much better?
18 A. Yes.
19 Q. She did not say her symptoms had gone
20 away?
21 A. No, she just said they were better.
22 Q. I see. And we know that she is still
23 experiencing many of those symptoms because she's still
24 taking the medications for them, right?
25 A. Right.

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1 A. That would be for panic attacks. I would
2 say now, those would not be her words, but that she
3 experienced some level of anxiety daily without
4 medicines.
5 Q. Okay.
6 A. And that I believe would be longer than
7 five years.
8 Q. I see. So she had a generalized anxiety
9 all the time?
10 A. I think so, yes.
11 Q. Okay. And dating back from the period of
12 time before she moved to Mississippi?
13 A. Yes.
14 Q. And the panic attacks were sporadic in
15 that timeframe, but also dated back that far; is that
16 right?
17 A. Right. She had received medicine for --
18 for that prior to her move to Mississippi.
19 Q. Okay. And did she attribute those, that
20 anxiety and panic attack -- panic attacks to any
21 particular cause?
22 A. Not really, just more stress related.
23 Q. All right. And did you -- did you
24 attribute those to any particular cause or just more
25 stress related?

21 (Pages 78 to 81)

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1 A. More stress related, not a manifestation
2 of other conditions.
3 Q. All right. And moving down to your
4 review of her symptoms under ear, nose and throat, what
5 did you write?
6 A. I wrote positive for nasal congestion.
7 Q. So tell us what that means. I think most
8 of us understand that, but tell us.
9 A. It can mean difficulty breathing because
10 your nose is stopped up or sensation of fullness in
11 your sinuses, your nose.
12 Q. So when she -- when you first saw her in
13 September of 2016, she had nasal congestion?
14 A. Yes.
15 Q. All right. And what did you write down
16 on the respiratory?
17 A. I just wrote down her report, her
18 reported. I didn't write more about that.
19 Q. And what did she report?
20 A. That she had had evaluation for a cough
21 in 2016, and there was a questionable whether someone
22 had diagnosed mild COPD, and she -- her thoughts were
23 that she had mold allergy, which was greater in
24 Mississippi.
25 Q. Okay. So again, those are reports from

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1 the patient and not any kind of diagnosis or assessment
2 that you made, true?
3 A. That's true. It's reports from the
4 patient.
5 Q. And the patient, Mrs. Bean, reported that
6 she had been treated for cough in 2016, and that maybe
7 somebody said she had mild POD -- COPD?
8 A. COPD.
9 Q. Is that right?
10 A. I think those were her words, yes.
11 Q. All right. And that she also said
12 "patient thinks this was due to mold allergy," right?
13 A. Right.
14 Q. Did she tell you whether any doctor had
15 told her that any of her symptoms were related to a
16 mold allergy?
17 A. She did not tell me anything regarding
18 that.
19 Q. In fact, she said, "I think it is because
20 of the mold allergy," right?
21 A. Well, yes, that would be my conclusion
22 from that, but I don't know if someone had told her
23 that.
24 Q. Okay. And did you see any respiratory
25 issues on this occasion or are you just writing down

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1 what she said?
2 A. Writing down her report.
3 Q. All right. Now, in the plan section of
4 this office note, which is on page 493 --
5 A. Yes.
6 Q. -- relating to dyspnea and respiratory
7 abnormalities, other, can you tell me what you wrote
8 there?
9 A. I wrote, and this is based on what she
10 had said, may have been related to mold exposure, but
11 her symptoms were much better now. So it was a comment
12 on that symptom.
13 Q. Right. So did you have a -- well, first
14 of all, did you see, was she experiencing this
15 condition when you treated her?
16 A. She did not appear to be short of
17 breath --
18 Q. Okay.
19 A. -- on that visit.
20 Q. All right. So in essence, what you were
21 saying is that her symptoms are much better now?
22 A. That was her report.
23 Q. Right.
24 A. Yes.
25 Q. Okay. And that her report was that this

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1 may have been related to mold exposure in Mississippi,
2 right?
3 A. That was her report, yes.
4 Q. All right. That is not your opinion; is
5 that correct?
6 A. I would not be able to conclude that
7 based on that visit.
8 Q. Right. So, and why is that?
9 A. Can you refine your question, please?
10 Q. Yes. I want to know why you sitting
11 where you were in 2016, could not confirm whether those
12 symptoms were caused by mold exposure or not?
13 A. Well, I did not see her during that time
14 when she had a cough, and it would -- it would be
15 difficult to conclude that based on the current exam at
16 that time.
17 Q. All right. So as I understand what you
18 just said, you were not treating her in 2013 to 2016,
19 when she had those symptoms, correct?
20 A. I was not.
21 Q. You don't know whether she had those
22 symptoms, true?
23 A. I don't know based on any examinations
24 during that time period or meeting with her, no, I do
25 not.

22 (Pages 82 to 85)

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1 Q. Yes, ma'am. And meaning you were not
 2 able to do a physical exam and confirm any of those
 3 symptoms during that time, right?
 4 A. That's right.
 5 Q. And you did not and were not able to ask
 6 her at that time what she may have been exposed to,
 7 correct?
 8 A. Correct.
 9 Q. Were you able to conduct any type of
 10 differential diagnosis as to what that symptom may have
 11 been caused by?
 12 A. You mean mentally?
 13 Q. No, ma'am. At that point in time.
 14 That's my point.
 15 A. Okay.
 16 Q. You were not able to do a diagnosis
 17 because you were not there.
 18 A. No, I was not there --
 19 Q. Right?
 20 A. -- that's correct.
 21 Q. And so when you see her after the fact,
 22 all you have is her report of what --
 23 A. Yes.
 24 Q. -- happened?
 25 A. That's all I have. Right.

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1 Q. And based on that report, can you give an
 2 opinion to a reasonable degree of medical certainty
 3 that she had any symptoms of the type she reported in
 4 2016?
 5 A. I cannot.
 6 Q. All right. And can you, assuming she had
 7 those symptoms, can you give an opinion to a reasonable
 8 degree of medical certainty as to what the cause of
 9 those symptoms was?
 10 A. No.
 11 Q. And assuming -- well, and can you, Dr.
 12 Emmett, give an opinion that any of those symptoms were
 13 caused by exposure to mold in her home while living at
 14 Keesler?
 15 A. I cannot.
 16 Q. And can you give an opinion today based
 17 upon your treatment of any of Mrs. Bean's illnesses or
 18 medical symptoms that any of those were caused by
 19 exposure to mold while she lived in Mississippi?
 20 A. I cannot.
 21 Q. And why is that? You just don't have
 22 enough information?
 23 A. I don't have adequate information.
 24 Q. All right. Is another reason that --
 25 that some of these symptoms also presented themselves

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1 before she even moved to Mississippi?
 2 A. Yes, that would be another reason.
 3 Q. All right. So not only do you not have
 4 enough information about when she lived in Mississippi,
 5 you also know that some of those same symptoms you were
 6 treating her for before she went.
 7 A. Yes.
 8 Q. And why is that? Why would that be
 9 relevant to whether or not that symptom could be caused
 10 by mold while she was living in Mississippi?
 11 A. I think if people have allergies, you
 12 know, if they have asthma or allergies they might have
 13 a stronger reaction to an allergen like mold.
 14 Q. Yes, ma'am. But the fact -- but as we
 15 talked about, the difficulty is identifying the
 16 particular allergen that may be provoking that, right?
 17 A. Yes, that's right.
 18 Q. All right. And with someone who has
 19 multiple allergies, how many allergies did Mrs. Bean
 20 have?
 21 A. I think there were at least six --
 22 Q. All right.
 23 A. -- classes documented on there.
 24 Q. So even if she had had an exaggerated
 25 effect, allergic reaction to something, it would be

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1 very difficult to determine which of the particular
 2 allergens was the cause, fair?
 3 A. That's fair.
 4 Q. All right. I want to move back to
 5 Exhibit 4. I'm sorry to go back and forth, but I just
 6 kind of wanted to cover --
 7 A. Which page?
 8 Q. 2439.
 9 A. Okay.
 10 Q. Now, what I'm -- what I have seen and
 11 what I'm going to do now is kind of take you through
 12 what I believe are the different -- the following
 13 office visits of Mrs. Bean.
 14 Are you with me?
 15 A. Yes.
 16 Q. And this one seems to be from --
 17 A. Thursday, March 16th, 2017.
 18 Q. Thank you. What did she report in terms
 19 of nasal congestion at that point?
 20 A. I think there were brief allusions to it.
 21 This is an annual exam, a Medicare wellness visit, and
 22 generally Medicare wellness visit is not considered
 23 evaluation of symptoms to be their primary focus.
 24 So patients usually are going through the
 25 wellness visit. I go ahead and document some symptoms,

23 (Pages 86 to 89)

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1 but generally the purpose of a wellness visit would not
 2 be to discuss symptoms at length or do evaluation.
 3 Q. I gotcha.
 4 A. We would expect someone to have a visit
 5 for purpose of evaluating symptoms.
 6 Q. Okay. So when -- under ENT it says
 7 "positive for nasal congestion," did she present with
 8 nasal congestion at that point?
 9 A. I think just confirmed that it was an
 10 ongoing symptom for her.
 11 Q. I gotcha. And then you have the same
 12 note with respect to the respiratory there that you
 13 had --
 14 A. Right.
 15 Q. -- on the previous note?
 16 A. Yes.
 17 Q. That just carried through?
 18 A. I think that just carried through and I
 19 don't recall her saying that she had exacerbations or
 20 problems.
 21 Q. Okay. Would you -- and your testimony
 22 about what that note means and the effect of that note
 23 would be the same as we've discussed --
 24 A. Yes.
 25 Q. -- before, right?

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1 A. Yes.
 2 Q. All right. And then 2433. Is this the
 3 next --
 4 A. Let's see --
 5 Q. -- wellness?
 6 A. Monday, March 19th. I apologize.
 7 Q. That's okay.
 8 A. Yes. Yes, this is Monday, March 19th,
 9 2018, another wellness visit.
 10 Q. So this is about a year later in 2018?
 11 A. That's correct.
 12 Q. You have the same note for nasal
 13 congestion indicating that this is a continuing
 14 problem, right?
 15 A. Continuing symptom, yes.
 16 Q. All right.
 17 A. Which most people mark on the review of
 18 systems.
 19 Q. Right. And the same note for respiratory
 20 there?
 21 A. Yeah. She would just briefly mention it,
 22 but we didn't -- I don't recall talking at length about
 23 it.
 24 Q. All right. Well, this is the same note
 25 and the same wording as in September of 2016, right?

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1 A. Of 20 -- March of 2017, I think.
 2 Q. Yes, ma'am. But it went all the way back
 3 to September of 2016 --
 4 A. Yes.
 5 Q. -- when this note first arose, right?
 6 A. Yes. Okay. Yes.
 7 Q. And it's just been carried through every
 8 time under respiratory, positive evaluation for cough,
 9 question mark, mild COPD. Patient thinks this was done
 10 to mold allergy -- due to mold allergy in Mississippi.
 11 A. Right.
 12 Q. That the note first shows up in
 13 September 2016, and you just carry it forward every
 14 time?
 15 A. Right, I don't think there was any change
 16 in that.
 17 Q. Right. And you would adopt the same
 18 testimony and opinions you have with respect to that
 19 note we've talked about before?
 20 A. Yes.
 21 Q. And turn to 2451.
 22 A. Right.
 23 Q. I apologize for jumping around a little
 24 bit. This was another -- a prescription note, right?
 25 A. Yes. Yeah, dated 1-25-2018.

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1 Q. And what is she asking for?
 2 A. She's asking for a refill on her
 3 Singulair and Alprazolam.
 4 Q. And what are those medications for?
 5 A. The Singulair usually would be used for
 6 allergic rhinitis. In some patients, asthma. And
 7 Alprazolam would be antianxiety agent, generally for
 8 panic attacks.
 9 Q. All right. And the Singulair, what would
 10 that indicate about whether she's continuing to have
 11 these symptoms?
 12 A. It would indicate either she's continuing
 13 to have the symptoms or she's very worried about them
 14 recurring.
 15 Q. All right. But in your treatment of her,
 16 she -- was she complaining about these rhinitis
 17 symptoms in the period after she came back from
 18 Mississippi?
 19 A. Yes, I gather she had ongoing, but
 20 usually it would be very brief mentions in most of
 21 those visits.
 22 Q. Right. And in all of these visits so far
 23 we see nasal congestion, that's what -- a reference to
 24 those symptoms; is that true?
 25 A. Yes.

24 (Pages 90 to 93)

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<p>1 Q. And the fact that she's on Singulair</p> <p>2 indicates that she's taking medication for those</p> <p>3 symptoms, right?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And 2455.</p> <p>6 A. This is, I think her -- I'm so sorry, go</p> <p>7 ahead.</p> <p>8 Q. No, go ahead. This may be an office note</p> <p>9 from somewhere else.</p> <p>10 A. It says Walgreen's Health Care Clinic,</p> <p>11 Alcoa, Tennessee. And so this would have been like for</p> <p>12 an urgent care appointment.</p> <p>13 Q. Right. And what did she present with on</p> <p>14 February 26th of 2018?</p> <p>15 A. The description is acute bronchitis, and</p> <p>16 then it says viral.</p> <p>17 Q. All right.</p> <p>18 A. I'm sorry. They also included some</p> <p>19 medical patient information.</p> <p>20 Q. All right.</p> <p>21 A. So the body of the note may be progress</p> <p>22 note. It's on 2458. It says cough.</p> <p>23 Q. Okay. So that brings me to I think what</p> <p>24 is your last visit with Mrs. Bean.</p> <p>25 If you go to page 2428 in this exhibit.</p>	<p>1 coughing at times. So that was an additional statement</p> <p>2 she made --</p> <p>3 Q. Yes, ma'am.</p> <p>4 A. -- during that visit.</p> <p>5 Q. Okay. And she wanted to be tested for</p> <p>6 mold because she thought she was being exposed to mold</p> <p>7 currently, or do you recall?</p> <p>8 A. I don't recall the exact phrase, but I</p> <p>9 think she was still thinking about possible effects of</p> <p>10 mold exposure from Mississippi.</p> <p>11 Q. Okay. So was she saying that her current</p> <p>12 cough, coughing was attributable to her exposure to</p> <p>13 mold back in Mississippi?</p> <p>14 A. That's what she had -- that was what she</p> <p>15 was alluding to.</p> <p>16 Q. All right. But you did not make that</p> <p>17 connection in your opinion, correct?</p> <p>18 A. No.</p> <p>19 Q. This is just what she was reporting?</p> <p>20 A. Yes.</p> <p>21 Q. All right. And the assessment on page</p> <p>22 2425, assessment means --</p> <p>23 A. Well, listing of the problems potentially</p> <p>24 identified.</p> <p>25 Q. Right.</p>
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<p>1 A. Okay.</p> <p>2 Q. Exhibit number four.</p> <p>3 A. 2428?</p> <p>4 Q. Yes, ma'am.</p> <p>5 A. Okay. Let's see. And the note starts</p> <p>6 on --</p> <p>7 Q. You may not have the beginning of it.</p> <p>8 A. I'm sorry. These electronic medical</p> <p>9 records, sometimes you have to put in a quote. The</p> <p>10 notes starts on 2423.</p> <p>11 Q. Okay.</p> <p>12 A. It's a Medicare wellness visit.</p> <p>13 Q. All right. And what's the date of that?</p> <p>14 A. March -- Wednesday, March 20th, 2019.</p> <p>15 Q. So that's back in this March of this</p> <p>16 year?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And you see, do you have your</p> <p>19 same note for nasal congestion there?</p> <p>20 A. Yes.</p> <p>21 Q. And the same note relating to</p> <p>22 respiratory, correct?</p> <p>23 A. One additional sentence that she had</p> <p>24 brought up. She thought she might want to be tested</p> <p>25 for mold because she said she still had episodes of</p>	<p>1 A. Or symptoms. I'm sorry.</p> <p>2 Q. Okay. You indicate without -- encounter</p> <p>3 for general adult medical examination without abnormal</p> <p>4 findings, right?</p> <p>5 A. Yes.</p> <p>6 Q. What does that mean?</p> <p>7 A. It just means a code that you submit to</p> <p>8 the insurance form and it's just a descriptive code for</p> <p>9 subsequent wellness visit for Medicare patients.</p> <p>10 Q. Okay. And without abnormal findings</p> <p>11 means?</p> <p>12 A. Right. That there were not major</p> <p>13 abnormal findings during that exam.</p> <p>14 Q. Right. You also wrote down under your</p> <p>15 assessment, "anxiety disorder unspecified," right?</p> <p>16 A. Uh-huh. Yes.</p> <p>17 Q. 2425?</p> <p>18 A. I did. Yes, I see it.</p> <p>19 Q. And when had she first been diagnosed</p> <p>20 with anxiety disorder?</p> <p>21 A. Over five years ago.</p> <p>22 Q. All right. That was at the period of</p> <p>23 time before she moved to Mississippi?</p> <p>24 A. Yes.</p> <p>25 Q. And there are other things there, but you</p>

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<p>1 also mention shortness of breath?</p> <p>2 A. As a symptom.</p> <p>3 Q. Yes. Had she also experienced shortness</p> <p>4 of breath before she moved to Mississippi?</p> <p>5 A. Well, she was diagnosed with pneumonia,</p> <p>6 so she would have experienced shortness of breath.</p> <p>7 This was before she moved to Mississippi.</p> <p>8 Q. Right.</p> <p>9 A. And I think shortness of breath is</p> <p>10 probably mentioned in a couple of her previous notes --</p> <p>11 Q. All right.</p> <p>12 A. -- from this practice.</p> <p>13 Q. So that was a long standing condition of</p> <p>14 hers before she went to Mississippi as well?</p> <p>15 A. I think it had been mentioned as a</p> <p>16 symptom.</p> <p>17 Q. Okay. I want to ask you about this next</p> <p>18 entry and it reads "Z-77.120, contact with an" in</p> <p>19 parentheses, "suspected exposure to mold", end</p> <p>20 parentheses, "toxic."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What is that, first of all? Is that a --</p> <p>24 A. That would be an ICD-10 code and that is</p> <p>25 the code you would use if you tested for it as a</p>	<p>1 Q. Let me ask. Would you need some kind of</p> <p>2 mold test or information about what levels of mold were</p> <p>3 present in a particular space?</p> <p>4 A. That would probably be helpful, but I</p> <p>5 don't know so far after the fact how valid it would be.</p> <p>6 Q. Okay. So even then, even if you had a</p> <p>7 mold test, they may not be enough is what you're</p> <p>8 saying?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And even if you had a photograph</p> <p>11 or whatever, that may not be enough?</p> <p>12 Is that what you're saying?</p> <p>13 A. Yes, that's what I'm saying.</p> <p>14 Q. Okay. So you would need information</p> <p>15 about the levels of mold that she was exposed to,</p> <p>16 correct?</p> <p>17 A. One of the things, yes, that's one of the</p> <p>18 things you would need.</p> <p>19 Q. But you would -- you doubt that you could</p> <p>20 get that information, especially after the fact, true?</p> <p>21 A. I doubt it.</p> <p>22 Q. All right. You would also need to know</p> <p>23 what symptoms she was reporting at the time, true?</p> <p>24 A. That is true.</p> <p>25 Q. Did you have or do you have any of that</p>
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<p>1 justification to the insurance company, although I</p> <p>2 advised her I was not sure it would be covered by her</p> <p>3 insurance.</p> <p>4 Q. Okay. So let's unpack all of that.</p> <p>5 Are you making a diagnosis that she has</p> <p>6 been exposed to mold or is that a code that you use to</p> <p>7 say if you wanted to order tests for that, that's what</p> <p>8 you have to show?</p> <p>9 A. That would be more if you had to order</p> <p>10 tests for it, that would be your reason behind it.</p> <p>11 Q. Okay. So in the event that you wanted to</p> <p>12 order tests for mold exposure, you need to write this</p> <p>13 code down so that -- so that they can get paid for it.</p> <p>14 Is that basically it?</p> <p>15 A. Potentially. Yes, it would be a code you</p> <p>16 would use.</p> <p>17 Q. All right. Are you making an opinion</p> <p>18 that she was exposed to mold?</p> <p>19 A. No.</p> <p>20 Q. And why aren't you making that opinion?</p> <p>21 A. I would not have enough data to prove</p> <p>22 that her symptoms were related to exposure to mold.</p> <p>23 Q. And what data and proof would you need to</p> <p>24 prove that her symptoms were exposed to mold?</p> <p>25 A. It would still be difficult.</p>	<p>1 information?</p> <p>2 A. Not the -- another provider. Not from</p> <p>3 another provider evaluation.</p> <p>4 Q. Right. So you would, if you were looking</p> <p>5 at this after the fact, you would want to look and see</p> <p>6 what she was actually reporting at the time, true?</p> <p>7 A. Yes.</p> <p>8 Q. And you don't have that information,</p> <p>9 right?</p> <p>10 A. I do not.</p> <p>11 Q. But even if you had the information about</p> <p>12 what she -- what symptoms she was reporting, you would</p> <p>13 need to know what all of the other potential causes</p> <p>14 were that could result in that symptom; is that true?</p> <p>15 A. That's true.</p> <p>16 Q. And then you would need to rule out every</p> <p>17 other potential cause leaving only exposure to mold; is</p> <p>18 that fair?</p> <p>19 A. Yes.</p> <p>20 Q. That's called a differential diagnosis,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And for someone who has multiple</p> <p>24 allergies, that would be difficult, if not impossible;</p> <p>25 is that fair?</p>

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1 A. That would be difficult, especially if
 2 you did not have pulmonary function tests or chest
 3 X-rays or other data to --
 4 Q. Right.
 5 A. -- show a physical abnormality.
 6 Q. Right. And in this case, you have seen
 7 CT scans or the results of CT scans --
 8 A. A report.
 9 Q. -- and X-rays indicating normal, right?
 10 A. Yes.
 11 Q. And so that's even more of a hill to
 12 climb in Mrs. Bean's case; is that true?
 13 A. That would be true.
 14 May I make a comment?
 15 Q. Yes.
 16 A. In that note on page 2424, it's not clear
 17 cut in the note, but there is a reference to a peak
 18 flow under vital signs.
 19 Q. Okay. And what was the reference?
 20 A. So it's PEFr 260 liters per minute. So
 21 you would just use that as a peak expiratory flow rate,
 22 meaning someone exhales into a tube. That number can
 23 be variable. And there's a graph that shows according
 24 to age and gender about what would be considered, but
 25 peak flow can be quite variable, so...

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1 Q. Okay. Well, what does that number mean
 2 in Mrs. Bean's case?
 3 A. That -- that number is low compared to a
 4 normal, but that result can -- there can be a variety
 5 of reasons including, you know, it's also effort
 6 dependent and I was not there when that test was
 7 administered.
 8 Q. I see. So you -- you would not say that
 9 -- you would defer to whoever performed that test as to
 10 what that test means in the scheme of things?
 11 A. Or you would need more than one data
 12 point.
 13 Q. Okay. Fair enough. I wanted to ask you
 14 some questions now about --
 15 A. Are we through with this exhibit?
 16 Q. You might want to clip it back together.
 17 A. Okay.
 18 (Exhibit 5 - Letter dated January 17, 2019.)
 19 BY MR. BOONE:
 20 Q. Let me show you what I'm going to mark as
 21 Exhibit Number 5, which are some records I think your
 22 office located recently and it looks like an email.
 23 A. It actually is a letter that was in a
 24 folded piece of paper that was placed on a number of
 25 paper documents.

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1 Q. Okay.
 2 A. So it's not an email.
 3 Q. All right. That's helpful. And it's
 4 been marked as Bean, Jeanne Bean-M 2583 and 2584.
 5 A. Okay.
 6 Q. And can you tell us what this -- what
 7 this letter is?
 8 A. This is a letter from Miss Bean talking
 9 more about her concerns about exposure to mold.
 10 Q. Okay.
 11 A. Because she had, during the course of a
 12 visit, she had talked briefly about shortness of breath
 13 and concern about mold, but she did not go into more
 14 detail at that -- during an office visit face-to-face.
 15 Q. All right. And so she sent you this
 16 letter after your office visit?
 17 A. Yes.
 18 Q. All right.
 19 A. About two weeks after.
 20 Q. All right. Now, while she may have sent
 21 you this letter and I'm sure you read it, right?
 22 A. I read over it, yes.
 23 Q. Okay. This is not one of your medical
 24 records, is it?
 25 A. It was not at the time. I think it's

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1 been scanned into the chart now.
 2 Q. Okay. But this is not a medical record
 3 generated by you or your office?
 4 A. No, and I did not talk with her about
 5 this letter after I received it.
 6 Q. Okay. And you haven't had any
 7 conversations with her about this?
 8 A. Not about that letter, no.
 9 Q. Okay. Was this the first knowledge that
 10 you had about any lawsuits --
 11 A. Yes.
 12 Q. -- or potential lawsuits.
 13 A. Well, when we got a records request from
 14 January I think, from your firm --
 15 Q. Yes, ma'am.
 16 A. -- I did not know what it was about, but
 17 release records.
 18 Q. Okay.
 19 A. Okay. I did not know what it was about,
 20 the details.
 21 Q. And clearly this is just Mrs. Bean
 22 writing to you providing information that she has, but
 23 that is unverified information as far as you are
 24 concerned, true?
 25 A. That's true.

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1 Q. So when she says things about some of the
2 homes had mold issues, you don't know whether that's
3 true or not, fair?
4 A. I do not.
5 Q. And when she thinks -- says things like
6 that they were living in one of the homes that was the
7 issue, you don't know whether that's true or not, fair?
8 A. I don't have any other confirmation of
9 that.
10 Q. That's right. And even when she says not
11 long after living there I started experiencing severe
12 breathing problems and shortness of breath.
13 Do you see that reference?
14 A. Yes, I do.
15 Q. You don't know whether that's true or
16 not, right?
17 A. Other than she had that visit where she
18 had a CT scan and the chest X-ray alluded to from
19 Biloxi, but, no, I don't have any other information.
20 Q. Right. In other words, you have not
21 reviewed her prior medical records from that time
22 period other than the ones that ended up in your file?
23 A. Just the brief ones, yes.
24 Q. Okay. And when she says -- so all of
25 this where she says she reported these issues to

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1 Q. It says "their lawyer has contacted us,"
2 right?
3 A. Oh, yes, I see that. Okay.
4 Q. Okay. And then she goes on to say "she
5 wants to take the case. We feel we may should do
6 this."
7 Do you see this?
8 A. Yes.
9 Q. Okay. She's saying that she is
10 contemplating joining the lawsuit at that point, isn't
11 she?
12 A. I'm sorry. Say that where that is again.
13 Q. "We feel we may should do this."
14 A. Okay.
15 Q. "She wants to take the case."
16 A. Okay.
17 Q. Would indicate to me that that lawsuit
18 has not been filed yet.
19 A. Okay.
20 Q. Is that -- is that your reading of that?
21 A. That would be my reading.
22 Q. Okay. Did you know that, in fact,
23 Mrs. Bean and Mr. Bean had already filed the lawsuit?
24 A. No.
25 Q. Did you know that the lawsuit has been

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1 maintenance over and over again, you don't know, that's
2 unverified?
3 A. I don't know.
4 Q. All right. I mean, did you know that
5 there were only a handful of reports in the two plus
6 years of any moisture related issue by the Beans while
7 they lived at Keesler?
8 A. I don't know anything really about it
9 other than what this letter says.
10 Q. Did you know that even the plaintiffs'
11 own experts, Dr. Grimsley and Mr. Weeks testified that
12 each response was addressed promptly and resolved the
13 issue?
14 A. I do not have any knowledge of that.
15 Q. Okay. She writes to you about the
16 lawsuit that was going on by other residents, right?
17 A. She does allude to that, yes.
18 Q. And she says that "their lawyer has
19 contacted us."
20 Do you see that sentence?
21 A. The lawyer has asked, I think, they want
22 to be part -- that's what you're referring to?
23 Q. Yeah, right here in the second line
24 following the to summarize paragraph.
25 A. Yes.

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1 pending for months --
2 A. No.
3 Q. -- at this point in time?
4 A. No.
5 Q. She references -- there's a sentence that
6 some of the mold -- "the homes have been tested by a
7 private company."
8 Do you see that reference?
9 A. I do.
10 Q. You've never seen any mold tests of any
11 of the Beans' residence, have you?
12 A. No.
13 Q. Or any other residence at Keesler for
14 that matter, have you?
15 A. I have not.
16 Q. And do you know whether that's true or
17 not?
18 A. I do not.
19 Q. All right. She says "our home had mold
20 in almost every room."
21 You don't know whether that's true or not
22 either, do you?
23 A. Outside from what she has said, I do not.
24 Q. Yes, ma'am. That even if she said it, we
25 don't know -- there's no way to -- you haven't verified

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<p>1 that?</p> <p>2 A. No.</p> <p>3 Q. Okay. And people in lawsuits say things</p> <p>4 a lot that need to be verified, don't they?</p> <p>5 A. I would think so.</p> <p>6 Q. Okay. And that's the purpose of the</p> <p>7 lawsuit, isn't it --</p> <p>8 A. Yes.</p> <p>9 Q. -- to verify it, right?</p> <p>10 A. Yes.</p> <p>11 Q. She does say in the middle of the page,</p> <p>12 "my lungs have not been at the capacity they were</p> <p>13 before I moved and lived in that housing."</p> <p>14 Do you have any information about that?</p> <p>15 A. I think she's alluding to the peak flow I</p> <p>16 pointed out in that note, but otherwise there was, I</p> <p>17 believe I said this before, a reference on the office</p> <p>18 record, the small pages of office records to pulmonary</p> <p>19 function tests, but I don't have a copy of the</p> <p>20 pulmonary function test --</p> <p>21 Q. Okay.</p> <p>22 A. -- from Mississippi.</p> <p>23 Q. All right. So sitting here today you</p> <p>24 don't know whether that's a true statement or not?</p> <p>25 A. I -- I can't conclude that based on a</p>	<p>1 Q. All right. And do you know why it was</p> <p>2 low?</p> <p>3 A. It's one data point. You can't really</p> <p>4 conclude anything from one data point like a peak flow,</p> <p>5 and her lungs as I recall, documented on the note,</p> <p>6 sounded clear that day.</p> <p>7 Usually peak flow would be used more for</p> <p>8 someone with asthma to measure whether their lungs are</p> <p>9 having a lot of wheezing and tightness. It could be</p> <p>10 effort related.</p> <p>11 Q. And when you say "effort related", what</p> <p>12 do you mean?</p> <p>13 A. I mean that somebody might not blow as</p> <p>14 hard as they could blow.</p> <p>15 Q. All right. And have you encountered that</p> <p>16 before?</p> <p>17 A. Some patients have trouble performing it</p> <p>18 correctly, and some just don't give it their best</p> <p>19 effort.</p> <p>20 Q. And have you encountered people where</p> <p>21 they have not given it their best effort?</p> <p>22 A. Yes.</p> <p>23 Q. And under what circumstances generally do</p> <p>24 you encounter people that haven't given it their best</p> <p>25 effort?</p>
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<p>1 single peak flow.</p> <p>2 Q. Okay. She says, "the only thing I would</p> <p>3 like your help with is if I can get -- would like an</p> <p>4 official report from you on the peak flow reading that</p> <p>5 Jessica did in the office."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Who is Jessica?</p> <p>9 A. That's my nurse.</p> <p>10 Q. Okay. Did -- did she do a peak flow?</p> <p>11 A. It is documented in the chart on that</p> <p>12 office note.</p> <p>13 Q. Is that the one that's referenced in the</p> <p>14 note you read --</p> <p>15 A. Yes.</p> <p>16 Q. -- to us earlier?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And sitting -- well, what --</p> <p>19 what can you tell us about what the result of that peak</p> <p>20 flow means, if anything, okay?</p> <p>21 A. Okay.</p> <p>22 Q. Can you tell us what that -- whether</p> <p>23 that's high or low, normal or abnormal, or any other</p> <p>24 information that would be helpful?</p> <p>25 A. Yes, it would be considered low.</p>	<p>1 A. I think some patients are afraid they'll</p> <p>2 trigger a coughing spell or they'll be uncomfortable or</p> <p>3 they don't understand how to seal their lips around the</p> <p>4 flow meter and blow as hard as they can.</p> <p>5 Q. Have you also seen patients involved in</p> <p>6 lawsuits not --</p> <p>7 A. I have not had that experience.</p> <p>8 Q. Okay. All right. But certainly that</p> <p>9 could be a potential --</p> <p>10 A. It could be.</p> <p>11 Q. -- explanation?</p> <p>12 A. Yes.</p> <p>13 Q. That somebody might not blow as hard</p> <p>14 knowing that they want to get a low result so that the</p> <p>15 doctor can say something's wrong?</p> <p>16 A. That could be, yes.</p> <p>17 Q. It's a possibility?</p> <p>18 A. Somebody could not give it their best</p> <p>19 effort.</p> <p>20 Q. Okay. And when she -- now this peak flow</p> <p>21 analysis that was done, was that done at Mrs. Bean's</p> <p>22 request or was that done at your request?</p> <p>23 A. You know, I don't remember now.</p> <p>24 Q. Okay.</p> <p>25 A. I'm sorry. I don't remember that.</p>

29 (Pages 110 to 113)

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<p>1 Q. Have you given Mrs. Bean an official 2 report on that peak flow? 3 A. No. 4 Q. Do you intend to? 5 A. I think what happened is that this letter 6 showed up in my pile of papers. She says here that she 7 intended to maybe send it with Jim, but I don't recall 8 him handing it to me at the time of his visit or even 9 alluding to it. I don't recall that. 10 He may -- well, this would be 11 speculation. He may have handed it to some other staff 12 member who just put it in my papers for review. 13 Q. Okay. 14 A. So I did not send her an official report. 15 Q. Okay. And that's just because you just 16 discovered it in connection with your preparation for 17 this deposition? 18 A. Yes. 19 Q. Okay. Fair enough. Do you intend to -- 20 to tell or give her an official report, or can you give 21 one based on the limitations that you told us about? 22 A. All that one would be able to say is that 23 she had a peak flow in the office on this date and this 24 was the result. 25 Q. And would you be able to interpret that</p>	<p>1 emphysema. Yes, it could result in that. 2 Q. Okay. 3 A. But usually it would be more significant 4 and noted on the pulmonary function test. 5 Q. Let me ask you, the next question is she 6 -- well, let me -- do you intend to provide an official 7 report to Mrs. Bean in response to this? 8 A. She has not called me back about that. 9 Q. Okay. All right. And you say -- she 10 says here "the other request is the fungal blood test." 11 A. Right. 12 Q. What was she asking for there? And I 13 think there are some office notes regarding that. 14 A. Right. Yeah. She talked about whether 15 she could have a test done and I think my lab staff 16 were trying to check on different tests. It's not a 17 very common test that I would order -- 18 Q. Look on -- 19 A. -- in my practice. 20 Q. Look on Exhibit Number 4 beginning at 21 page 2446. 22 A. Yes. 23 Q. This appears to be some correspondence 24 internal regarding that -- 25 A. Right. That would be --</p>
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<p>1 result one way or the other to a reasonable degree of 2 medical certainty? 3 A. All I would be able to say on that date, 4 that result was low given her age and gender. 5 Q. Okay. 6 A. But I wouldn't be able to make any 7 definite conclusions from that. 8 Q. All right. And you would not be able to 9 determine what particular causes, if any -- 10 A. No, could not. 11 Q. -- resulted in that low peak flow? 12 A. No. 13 Q. And peak flows, they're done for asthma 14 and COPD patients, right? 15 A. Right. 16 Q. And -- 17 A. Maybe not so much COPD, but more for 18 asthma -- 19 Q. Okay. 20 A. -- because they can have a lot of 21 variability in their symptoms. 22 Q. I'm just curious whether a smoking 23 history of 20 years could result in a low peak flow 24 test? 25 A. It might if you had significant</p>	<p>1 Q. -- situation; is that right? 2 A. -- would be under phone or log note 3 section of the chart. 4 Q. So tell us what's going on here? 5 A. She had asked about the fungal blood test 6 briefly during her annual wellness visit and I'd 7 advised her that I was not sure it would be covered by 8 her insurance for the purpose, and she wanted to know 9 how much it would be. 10 Q. And how much is it? 11 A. It looks like, I'm sorry. This is on 12 page 2447, because she had also asked -- my lab freezes 13 a sample specimen of blood serology when people come in 14 for labs prior to their visit, and she had asked if it 15 could just be added on to her labs and it could not. 16 And then it says the test -- it just 17 really depends. It said the test could be 107 to 112 18 or other options, it would be 400 plus range. 19 And then I asked for them to show me a 20 guide, a reference with the available tests. 21 Q. Okay. 22 A. We have a template for ordering labs and 23 it's not a common test, so it was something we had to 24 do extra, try to do an extra search for. 25 Q. So let me ask you what this fungal</p>

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<p>1 antibody panel two is.</p> <p>2 A. Uh-huh.</p> <p>3 Q. What is it?</p> <p>4 A. They just look at antibody levels to some</p> <p>5 molds that could cause significant illness.</p> <p>6 Q. And are these -- would these be the</p> <p>7 current antibody levels in a person's blood?</p> <p>8 A. Yes.</p> <p>9 Q. And is that evidence that the person is</p> <p>10 currently being exposed to those things?</p> <p>11 A. Not necessarily.</p> <p>12 Q. I guess what I'm -- my real question is,</p> <p>13 what information would that provide you or provide her</p> <p>14 that would be helpful?</p> <p>15 A. Well, if it was low or negative, it would</p> <p>16 provide her some help for information that perhaps her</p> <p>17 symptoms were not related to a serious mold infection.</p> <p>18 Q. Do the presence of antibodies on this</p> <p>19 test, whatever result you get, does it indicate that</p> <p>20 you are susceptible to exposure to those kinds of</p> <p>21 things or is it like an allergy test or what is it?</p> <p>22 A. It's not an allergy test. It would just</p> <p>23 be some evidence that somebody might have had a</p> <p>24 previous mold exposure.</p> <p>25 Q. So does the existence of an antibody</p>	<p>1 I'm trying to understand what this --</p> <p>2 A. Yes.</p> <p>3 Q. -- would even provide.</p> <p>4 And basically what you're telling me is</p> <p>5 that, Dr. Emmett, even if you were sitting here with</p> <p>6 the results from the -- the fungal antibody panel --</p> <p>7 A. Right.</p> <p>8 Q. -- that you suggested, and those results</p> <p>9 showed that she had antibodies for a particular type of</p> <p>10 mold, you would not be able to link those to any</p> <p>11 particular exposure either yesterday or six months ago</p> <p>12 or two years ago; is that true?</p> <p>13 A. I probably could not.</p> <p>14 Q. All right. What was the end result of</p> <p>15 the mold test back and forth?</p> <p>16 Did that information get provided to</p> <p>17 Mrs. Bean?</p> <p>18 A. I believe so, and I think I said that</p> <p>19 advised -- provided the order, but she would have to</p> <p>20 come in for a blood sample and I've looked and there's</p> <p>21 not been any lab appointment made, so I don't think she</p> <p>22 came in --</p> <p>23 Q. All right.</p> <p>24 A. -- beyond that.</p> <p>25 Q. So I appreciate your patience this</p>
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<p>1 today indicate that somebody may have been exposed to</p> <p>2 mold three years ago?</p> <p>3 A. It might not be able to tell a definite</p> <p>4 timeline on that.</p> <p>5 Q. That's -- I guess that's really what my</p> <p>6 question was. If you take my antibodies today --</p> <p>7 A. Right.</p> <p>8 Q. -- and I show that I have an antibody</p> <p>9 that's in response to a mold --</p> <p>10 A. Right.</p> <p>11 Q. -- would we ever be able to -- does that</p> <p>12 mean that I'm exposed to a mold like recently or can</p> <p>13 that mean that I was exposed to a mold two years ago,</p> <p>14 or do you know?</p> <p>15 A. You might not be able to be definite, but</p> <p>16 there are some conditions where certain molds like</p> <p>17 Coccidioides is not usually present in this part of</p> <p>18 Tennessee, so somebody might have been exposed</p> <p>19 elsewhere and that might be considered unusual for this</p> <p>20 area.</p> <p>21 But no, it probably cannot specify a</p> <p>22 definite date when one would have been exposed.</p> <p>23 Q. Okay.</p> <p>24 A. And of course, I'm a primary care doctor.</p> <p>25 Q. Oh, look, I understand that. I'm just --</p>	<p>1 morning. I do have some kind of follow-up questions to</p> <p>2 kind of wrap it all up and then I'm going to turn it</p> <p>3 over to some other folks who may have some questions</p> <p>4 but --</p> <p>5 A. Okay.</p> <p>6 Q. -- I want to see if I understand what we</p> <p>7 have discussed this morning.</p> <p>8 You treated Mr. Bean for fatigue,</p> <p>9 rhinitis and those kinds of things before he even left</p> <p>10 for Mississippi, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you treated him for those same</p> <p>13 symptoms after he came back from Mississippi, correct?</p> <p>14 A. As I mentioned, yes.</p> <p>15 Q. And you did not treat Mr. Bean during the</p> <p>16 time that he was gone to Mississippi?</p> <p>17 A. I did not.</p> <p>18 Q. And you don't know what symptoms he</p> <p>19 reported, if any, while he was in Mississippi?</p> <p>20 A. I do not.</p> <p>21 Q. And you don't know the conditions of the</p> <p>22 home that Mr. Bean lived in, mold tests, any evidence</p> <p>23 at all about what those circumstances were while he was</p> <p>24 in Mississippi, correct?</p> <p>25 A. I do not have that knowledge.</p>

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<p>1 Q. And you don't know any of the other facts</p> <p>2 or circumstances that would be necessary to make a</p> <p>3 differential diagnosis as to the cause of any symptoms</p> <p>4 Mr. Bean had while he lived in Mississippi, fair?</p> <p>5 A. I do not have.</p> <p>6 Q. And though, so therefore, you can't</p> <p>7 testify to a reasonable degree of medical certainty</p> <p>8 whether any symptoms that Mr. Bean complained of were</p> <p>9 caused by exposure to mold in his home at Keesler Air</p> <p>10 Force Base, true?</p> <p>11 A. I cannot testify to that.</p> <p>12 Q. All right. And the same with respect to</p> <p>13 Mrs. Bean, you treated her for rhinitis, sinusitis,</p> <p>14 shortness of breath and other issues before she left</p> <p>15 for Mississippi, right?</p> <p>16 A. Yes.</p> <p>17 Q. And you treated her for those same</p> <p>18 symptoms after she came back from Mississippi, right?</p> <p>19 A. I don't recall a sinusitis.</p> <p>20 Q. Okay. But the other ones you did?</p> <p>21 A. Yes, she received medicine for allergic</p> <p>22 rhinitis.</p> <p>23 Q. All right. And you did not treat</p> <p>24 Mrs. Bean while she was in Mississippi, right?</p> <p>25 A. I did not.</p>	<p>1 true?</p> <p>2 A. I cannot.</p> <p>3 MR. BOONE: Those are all the questions I</p> <p>4 have and there may be others from some other</p> <p>5 folks.</p> <p>6 THE WITNESS: Okay.</p> <p>7 THE VIDEOGRAPHER: Let's go off the</p> <p>8 record, and make a change.</p> <p>9 MR. BOONE: All right.</p> <p>10 THE VIDEOGRAPHER: Off the record. It's</p> <p>11 10:39. This is the end of DVD number two.</p> <p>12 (Off record discussion.)</p> <p>13 THE VIDEOGRAPHER: All right. Back on</p> <p>14 the record. It's 10:39. This is the beginning of</p> <p>15 DVD number three.</p> <p>16 MR. BOONE: Taylor, do you have any</p> <p>17 questions, do you want --</p> <p>18 MS. WHITE: I do. Do you want me to go</p> <p>19 ahead?</p> <p>20 MR. BOONE: Yeah, I think -- Scott, if</p> <p>21 it's okay, why don't we let Taylor go and then you</p> <p>22 can go after that.</p> <p>23 MR. WELLS: Okay, that sounds great.</p> <p>24 MR. BOONE: Okay, good.</p> <p>25 MS. WHITE: Scott, can you hear me okay?</p>
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<p>1 Q. Nor have you reviewed in detail all of</p> <p>2 her medical records from that period.</p> <p>3 A. I have not.</p> <p>4 Q. So you don't know what symptoms, if any,</p> <p>5 she complained of while she lived in Mississippi,</p> <p>6 right?</p> <p>7 A. Right.</p> <p>8 Q. Do you know what evidence there was as to</p> <p>9 the cause or circumstances of any of those symptoms</p> <p>10 while she was living in Mississippi?</p> <p>11 A. I'm sorry, can you say that again?</p> <p>12 Q. Yes, ma'am. You don't have any</p> <p>13 information about the cause or circumstances of any of</p> <p>14 the symptoms she did report while she was living in</p> <p>15 Mississippi, true?</p> <p>16 A. Not other than her report.</p> <p>17 Q. Right. And so for that reason you have</p> <p>18 not performed and don't have enough information to do a</p> <p>19 differential diagnosis on any symptoms she had while</p> <p>20 she was in Mississippi, fair?</p> <p>21 A. That's fair.</p> <p>22 Q. So at the end of the day, you can't</p> <p>23 testify to a reasonable degree of medical certainty</p> <p>24 that any of the Beans, Mr. Bean or Mrs. Bean's medical</p> <p>25 symptoms were caused by exposure to mold in their home,</p>	<p>1 MR. BOONE: He's probably on mute.</p> <p>2 MS. WHITE: Okay.</p> <p>3 MR. WELLS: I couldn't hear anything, if</p> <p>4 you just spoke. I'm not on mute at the moment.</p> <p>5 MR. BOONE: Just go ahead and speak. If</p> <p>6 he can hear me, he can hear you.</p> <p>7 MS. WHITE: Okay.</p> <p>8 EXAMINATION BY MS. WHITE:</p> <p>9 Q. Okay. Dr. Emmett, my name is Taylor</p> <p>10 White. I represent Forest City Residential Management</p> <p>11 Company and I have just a very few questions and bear</p> <p>12 with me, I'm going to jump around just a little bit.</p> <p>13 A. Okay.</p> <p>14 Q. If you will look back with me at</p> <p>15 Exhibit 5.</p> <p>16 A. Yes.</p> <p>17 Q. This is a letter, right, that Miss Bean</p> <p>18 wrote to you on March 25th, 2019?</p> <p>19 A. Yes.</p> <p>20 Q. Look with me about halfway down the page</p> <p>21 where it says, "my lungs have not been at the capacity</p> <p>22 they were before I moved and lived in that housing unit</p> <p>23 for two years."</p> <p>24 First of all, you testified earlier that</p> <p>25 sometimes people when they're administered a peak test</p>

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1 or what is the other, the pulmonary function test, they
2 from time to time don't give their best effort; is that
3 correct?

4 A. That's why it would be difficult to make
5 a conclusion based on one peak flow, that there can be
6 several variables.

7 Q. Okay. And I just wanted to point you
8 quickly, if you can turn with me to the archived
9 records and I'm looking at an office visit on
10 July 12th, 2005.

11 A. Uh-huh.

12 Q. On that day it says that "the patient had
13 PFTs earlier this year. They seemed to show mild
14 obstructive pattern. However, the operator noted that
15 her effort was poor."

16 It goes on to say "the patient feels that
17 she did the best she could. However, when my nurse did
18 a peak flow today, she also noted that the patient did
19 not appear to have good effort."

20 So based on this, and this is from 2005,
21 would you agree with me that Mrs. Bean might have in
22 the past shown a possible propensity to maybe not give
23 her best effort in a PFT or peak test?

24 A. Well, that is not always intentional,
25 but, yes, those -- when I saw that peak flow test, I

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1 That could mean a culture. I'm sorry,
2 that's probably what CX refers to.

3 Q. I understand.

4 A. Versus a serology --

5 Q. Okay.

6 A. -- which would be immediate testing and a
7 culture would be looking for growth of a fungus.

8 Q. I see. So I read that to mean, where it
9 says "the test gets CX for 120 days."

10 I read that to mean that it could show
11 potential exposure to mold or fungus within the past
12 120 days, but that's incorrect, right?

13 A. Just based on what he says here, I think
14 it's probably a culture that's being held to look for
15 evidence of active growth.

16 Q. I understand.

17 A. Okay. Like a blood culture so --

18 Q. So that would be potential exposure to
19 mold or fungus currently, not something that would have
20 occurred --

21 A. Well, if somebody were sick enough to
22 have it in their blood, they might have had that for
23 several years if there were actual fungal growth in the
24 blood, but usually it's more recent --

25 Q. I understand.

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1 was interested in what the operator had to say at that
2 date.

3 Q. Sure. I understand. Okay.

4 And going on down the page, earlier we
5 discussed the fungal blood test or the possibility of
6 ordering that and I just wanted to point you to, and I
7 think this was in Exhibit 1 -- Exhibit 4, on page 2447.

8 A. Yes.

9 Q. Okay. And I just wanted to clarify the
10 timeline of, you know, potential exposure and what
11 those kind of tests might show.

12 If you'll look at the bottom of the page.
13 The sentence that begins, "okay. The test cannot be
14 added on. The fungal CX of the blood," let's see, next
15 line.

16 "I was told the price is closer to 107
17 versus 112. The test gets CX."

18 What does CX stand for?

19 A. I'm not sure what that -- what that
20 stands for.

21 Q. Okay.

22 A. I mean, it says collected as blood. I'm
23 not sure if that's a special tube. It might be
24 sometimes things are held for 120 days if they had a
25 culture.

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1 A. -- if it were something like that.

2 Q. Okay. Give me one second. Okay.

3 I want to briefly go back to the allergy
4 testing when you referred Miss Bean to Dr. Prince.

5 A. Uh-huh.

6 Q. And I think that was in 2001, then maybe
7 again in 2005, or so.

8 And you don't have to flip back if you
9 don't want to, but I remember when you testified
10 earlier that it showed she had tested positive for
11 allergies to cats, cockroaches, mold, maybe grass --

12 A. Trees.

13 Q. -- trees.

14 Would you agree with me that there are
15 thousands, maybe hundreds of thousands of different
16 types of mold in the world?

17 A. That's what I've been told. That's what
18 I've been told, yes, there are many types of mold and
19 it is not more definitive for any particular type on
20 the testing.

21 Q. I see.

22 A. There might be some. Since I don't have
23 a copy of the actual allergy testing on the report that
24 Dr. Prince did, I wouldn't be able to speak more
25 directly on that.

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<p style="text-align: right;">Page 130</p> <p>1 Even then, they cannot test for every</p> <p>2 single type of mold that exists, but there's probably</p> <p>3 several species that might be common that might be on</p> <p>4 the allergy testing, but again I don't have a copy of</p> <p>5 that, the actual printout.</p> <p>6 MS. WHITE: Okay. Can we go off the</p> <p>7 record for one minute?</p> <p>8 THE VIDEOGRAPHER: Off the record. It's</p> <p>9 10:46.</p> <p>10 (Off record discussion.)</p> <p>11 THE VIDEOGRAPHER: Back on the record.</p> <p>12 It's 10:48.</p> <p>13 (Exhibit 6 - Allergy Associates Record.)</p> <p>14 BY MS. WHITE:</p> <p>15 Q. Okay. Dr. Emmett, I'm going to hand you</p> <p>16 what's now been marked as Exhibit 6, I believe.</p> <p>17 Exhibit 6, if you wouldn't mind reviewing that.</p> <p>18 That is a page out of the Allergy</p> <p>19 Associates records that we received from Dr. Prince.</p> <p>20 A. Okay.</p> <p>21 Q. And if you'll look toward the bottom, I</p> <p>22 think it's section, it begins with Section L.</p> <p>23 A. Yes.</p> <p>24 Q. First of all, what -- do you know what</p> <p>25 those potential allergens are?</p>	<p style="text-align: right;">Page 132</p> <p>1 any doctor to assess whether Mrs. Bean came in contact</p> <p>2 with any type of mold that she could be allergic to in</p> <p>3 Mississippi; is that correct?</p> <p>4 A. Not unless she had a more recent allergy</p> <p>5 test and I don't -- I don't know the answer to that.</p> <p>6 This test is from 2001.</p> <p>7 MS. WHITE: All right. Dr. Emmett, I</p> <p>8 think that's all I have.</p> <p>9 MR. BOONE: Okay. Scott?</p> <p>10 MR. WELLS: Oh, thank you. I'm sorry.</p> <p>11 I'm having trouble hearing most voices except for</p> <p>12 Walter's today.</p> <p>13 THE WITNESS: Okay. I'll speak up.</p> <p>14 EXAMINATION BY MR. WELLS:</p> <p>15 Q. Thank you. Dr. Emmett, I just have a</p> <p>16 couple questions. Again, I'm Scott Wells.</p> <p>17 Our office represents Jeanne and James</p> <p>18 Bean in the litigation that's the subject matter of</p> <p>19 this deposition.</p> <p>20 First of all, did you request medical</p> <p>21 records from the providers that rendered services to</p> <p>22 the Beans in Mississippi?</p> <p>23 A. I -- we requested and received I think</p> <p>24 six pages. I'm sorry. I don't have my chart open</p> <p>25 right now, from her initial visit. I don't think that</p>
<p style="text-align: right;">Page 131</p> <p>1 A. It looks like there might be some yeast</p> <p>2 and molds, different types.</p> <p>3 Q. And if you'll look at the column out to</p> <p>4 the right of that, do you see that it looks like</p> <p>5 there's a zero by each different --</p> <p>6 A. So it says that there was a weal, meaning</p> <p>7 like a hive raised at the time of the testing or a</p> <p>8 flare. These are from Dr. Prince's records.</p> <p>9 There is a grade and it says zero.</p> <p>10 There's no reaction marked according to this testing.</p> <p>11 Q. So there is a no reaction marked to any</p> <p>12 of the types of mold that Dr. Prince tested for,</p> <p>13 correct?</p> <p>14 A. I don't see any on this report.</p> <p>15 Q. Whereas, if you compare it up above to,</p> <p>16 for example, the German cockroach in --</p> <p>17 A. Yes.</p> <p>18 Q. -- Section K --</p> <p>19 A. Right.</p> <p>20 Q. There is a notation that indicates it's a</p> <p>21 potential allergen, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So without knowing what type of</p> <p>24 mold would have existed in Mrs. Bean's home in</p> <p>25 Mississippi, there's no way for you or Dr. Prince or</p>	<p style="text-align: right;">Page 133</p> <p>1 I requested records on Mr. Bean.</p> <p>2 Q. Okay. With respect to Mrs. Bean, I</p> <p>3 understand you saw reports regarding her X-ray and CT</p> <p>4 following her hospital visit.</p> <p>5 Is that what you reviewed?</p> <p>6 A. That's what I received, yes.</p> <p>7 Q. Okay. As far as other visits complaining</p> <p>8 about other rhinitis type symptoms, that's something</p> <p>9 you never would have reviewed or did not review; am I</p> <p>10 correct?</p> <p>11 A. I don't think I received any of those</p> <p>12 records for review.</p> <p>13 Q. Thank you. As far as whether any</p> <p>14 conditions experienced by the Beans, either Jeanne or</p> <p>15 James, were caused by mold or their conditions in</p> <p>16 Mississippi, you're simply not rendering an opinion</p> <p>17 about whether or not they were affected by that?</p> <p>18 Is my understanding correct?</p> <p>19 A. Can you repeat that last question? I had</p> <p>20 trouble hearing that last part.</p> <p>21 Q. Yes, ma'am. I'll do that again.</p> <p>22 It's my understanding that you're not</p> <p>23 rendering an opinion as to whether any of the symptoms</p> <p>24 experienced by the Beans in Mississippi were caused by</p> <p>25 their living conditions in Mississippi?</p>

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<p>1 A. I -- I cannot render an opinion.</p> <p>2 Q. Okay. And you have not done so; am I</p> <p>3 correct?</p> <p>4 A. I have not done so.</p> <p>5 Q. And as far as whether any of their</p> <p>6 rhinitis symptoms, fatigue symptoms, breathing issues</p> <p>7 were experienced in Mississippi, you have no personal</p> <p>8 knowledge as to whether they were experiencing any of</p> <p>9 that, so you cannot testify regarding that; am I</p> <p>10 correct?</p> <p>11 A. You are correct.</p> <p>12 Q. When Mr. Bean came back to you after</p> <p>13 residing in Mississippi, I understand he told you about</p> <p>14 coronary artery disease and a stent that he received.</p> <p>15 A. Yes.</p> <p>16 Q. Yes? Okay. And that's one of the main</p> <p>17 most intrusive conditions or effects he experienced in</p> <p>18 Mississippi that he talked to you about from my</p> <p>19 understanding; is that right?</p> <p>20 A. That is a condition he gave me an update</p> <p>21 on, on his initial visit, or on his first visit back.</p> <p>22 Q. Okay. As opposed to additional rhinitis</p> <p>23 symptoms, I would assume that receiving a stent is a</p> <p>24 lot more serious a procedure and something of greater</p> <p>25 concern in a medical review; is that right?</p>	<p>1 sinusitis, and those conditions before she went to</p> <p>2 Mississippi, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you treated her for those same</p> <p>5 symptoms after she came back from Mississippi, right?</p> <p>6 A. Except for the sinusitis.</p> <p>7 Q. Except for the sinusitis?</p> <p>8 A. Yes.</p> <p>9 Q. And the fact that you treated her for</p> <p>10 those symptoms both before and after, would also make</p> <p>11 it difficult if not impossible to link those to mold</p> <p>12 while she lived at Keesler as well, correct?</p> <p>13 A. Correct.</p> <p>14 MR. BOONE: That's it.</p> <p>15 MS. WHITE: I have just one follow-up.</p> <p>16 I'm so sorry, Dr. Emmett.</p> <p>17 THE WITNESS: Okay. That's okay.</p> <p>18 REEXAMINATION BY MS. WHITE:</p> <p>19 Q. In addition to the rhinitis and other</p> <p>20 respiratory problems that you treated Mrs. Bean for</p> <p>21 both before and after her move to Mississippi, do you</p> <p>22 agree with me that you also treated Mrs. Bean for</p> <p>23 depression and anxiety both before and after her move</p> <p>24 to Mississippi?</p> <p>25 A. Yes.</p>
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<p>1 A. Oh, than rhinitis you mean?</p> <p>2 Q. Right, instead of rhinitis?</p> <p>3 A. Yes, that would probably get a doctor's</p> <p>4 attention more.</p> <p>5 MR. WELLS: Thank you, Dr. Emmett.</p> <p>6 That's all I have today.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. BOONE: Just two more minutes and</p> <p>9 then we're done.</p> <p>10 THE WITNESS: Okay. All right.</p> <p>11 REEXAMINATION BY MR. BOONE:</p> <p>12 Q. You did, Dr. Emmett, treat both of the</p> <p>13 Beans for -- well, Mr. Bean for fatigue and rhinitis</p> <p>14 before he moved to Mississippi, correct?</p> <p>15 A. Yes, those were mentioned in his medical</p> <p>16 record prior.</p> <p>17 Q. And you treated him for that after he</p> <p>18 came back from Mississippi, correct?</p> <p>19 A. That's mentioned in his record, yes.</p> <p>20 Q. And those facts would make it extremely</p> <p>21 difficult for you or anyone to link those same symptoms</p> <p>22 to exposure to mold at Keesler, wouldn't they?</p> <p>23 A. Yes.</p> <p>24 Q. And the same thing for Mrs. Bean, you</p> <p>25 treated her for shortness of breath, rhinitis,</p>	<p>1 MS. WHITE: Okay. That's it.</p> <p>2 MR. BOONE: Thank you.</p> <p>3 THE WITNESS: Okay.</p> <p>4 THE VIDEOGRAPHER: Off the record. It's</p> <p>5 10:56. This concludes our deposition.</p> <p>6 FURTHER THIS DEONENT SAITH NOT</p> <p>7 (The deposition concluded at 10:56</p> <p>8 central time.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE
 2 STATE OF TENNESSEE
 3 COUNTY OF KNOX
 4 I, Georgette H. Mitchell, Registered
 5 Professional Reporter, Licensed Court Reporter #55 and
 6 Notary Public, do hereby certify that I reported in
 7 machine shorthand the deposition of KIM EMMETT, M.D.,
 8 called as a witness at the instance of the Defendants,
 9 that the said witness was duly sworn by me; that the
 10 reading and subscribing of the deposition by the
 11 witness was waived; that the foregoing pages were
 12 transcribed under my personal supervision and
 13 constitute a true and accurate record of the deposition
 14 of said witness.

15 I further certify that I am not an attorney or
 16 counsel of any of the parties, nor an employee or
 17 relative of any attorney or counsel connected with the
 18 action, nor financially interested in the action.

19 Witness my hand and seal this the 2nd day of
 20 August, 2019.
 21
 22

23 _____
 Georgette H. Mitchell
 24 Registered Professional
 Reporter, Licensed Court
 25 Reporter 55, LCR expires
 6-30-20 and Notary Public
 My Commission Expires:

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